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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1939

No. 386

THE DICKINSON INDUSTRIAL SITE, INC., A CORPORATION, FORMERLY THE ALBERT DICKINSON COMPANY, PETITIONER,

vs.

PERCY COWAN, EDGAR N. GREENEBAUM, WALTER A. WADE, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED SEPTEMBER 14, 1939.

CERTIORARI GRANTED NOVEMBER 6, 1939.

SUPREME COURT OF THE UNITED STATES

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[fol. a] [Caption omitted]

[fol. 1]

IN UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

No. 56189

In the Matter of THE ALBERT DICKINSON COMPANY, an Illinois Corporation

CREDITORS' PETITION UNDER SECTION 77B OF THE BANKRUPTCY ACT OF 1896 AS AMENDED AND SUPPLEMENTED—Filed June 13, 1934

To the Honorable Judges of the District Court:

The petition of Joseph W. Finnell, Noble D. Wolf, and F. M. Green, respectfully shows:

(1) That The Albert Dickinson Company is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its principal office in the City of Chicago and State of Illinois, where said corporation has had its principal place of business for upwards of the past six (6) months; that it is engaged in the business of dealing in seeds, grain and merchandise and conducting and operating storage warehouses.

(2) That your petitioners are creditors of the said The Albert Dickinson Company, a corporation, having provable claims against said debtor which amount in the aggregate in excess of the value of securities held by them to the sum of One Thousand Dollars ($1,000.00) and over. That the nature and amount of your petitioners' claims are as follows:

Joseph W. Finnell is the owner and holder of first mortgage and leasehold bonds executed by the debtor corporation, numbered 718 and 719, each in the principal sum of $1,000, totalling $2,000.00, together with interest at 6½% from June 1, 1934;

[fol. 2] Noble D. Wolf is the owner and holder of first mortgage and leasehold bonds executed by the debtor cor-

poration numbered 548 and 549, each in the principal sum of $1,000, totalling $2,000.00, together with interest at 6½% from June 1, 1934; and

F. M. Green is the owner and holder of first mortgage and leasehold bonds executed by said debtor corporation, numbered 399, 523, 772, 773, 774 each in the principal sum of $1,000; and 1787, 1788, 1789, 2267, 1923, 1678, 1870, each in the principal sum of $500.00, totalling $8,300.00, together with interest at 6½% from June 1, 1934;

that all of said bonds so owned and held by your petitioners are secured by a first trust deed against real estate owned in fee and by leasehold by the debtor located in the City of Chicago, County of Cook and State of Illinois; that although the total par value of said bonds is $12,500.00, the actual value of said first mortgage and leasehold bonds owned by your petitioners is substantially less than Ten Thousand Dollars ($10,000.00), and that your petitioners have provable claims against said debtor in excess of the sum of One Thousand Dollars ($1,000.00).

(3) That your petitioners are filing this petition under Section 77B of the Bankruptcy Act, approved July, 1896, as amended and supplemented, and that said debtor is a corporation which could become subject to the provisions of said Bankruptcy Act, and particularly the provisions of Section 77B thereof. That the debtor's assets and liabilities, according to its Balance Sheet purporting to be a true and correct statement of its financial condition as of January 31, 1934, are as follows:

[fol. 31] Assets

Cash		$13,258.03
Special deposit Central Republic Trust Co.		11,785.30
		25,043.33
South West Trust & Savings Bank	$5,453.81	
Less Reserve for bad debts	4,000.00	1,453.81
Accounts Receivable	58,300.61	
Less Reserve for bad debts	6,500.00	52,000.61
Travelers branches		806.42
Branch plants Idaho		311.16
Inter company accounts		18,409.05
Prepaid insurance, rent and other advances		21,890.56

Inventory:	
Seed and grain	134,757.31
Supplies	26,841.64
Transit	92.71
	279,606.60
Investments:	
Albert Dickinson Company, Treasury bonds	89,500.00
Albert Dickinson Company, Preferred	5,200.00
Plants:	
35th Street, Chicago	5,530,198.95
Minneapolis	180,954.34
Ord, Odebolt, Cisco & Branches	179,503.50
Autos and trucks	19,100.00
Brand and trade marks and good will	500,000.00
Bond issue expense	41,530.16
	$6,805,599.55

Liabilities

Bills payable sundry	26,000.00
Sanitary district	3,276.10
Hall Roberts (seed)	1,507.34
Letters of credit payable	4,302.90
Accounts payable	31,748.06
Accounts payable bags	5,274.05
Inter company accounts	23,320.87
Reserve for taxes and interest due	75,576.90
Reserve for taxes not levied and sundry deferred accts.	145,405.01
	$318,411.23
1st mortgage	1,978,500.00
Sanitary District	3,071.34
Greenebaum Sons Investment Co., notes	20,000.00
Dickinson Company notes	328,000.00
Reserve for depreciation	613,880.88
Capital stock preferred	949,000.00
Capital stock common	2,132,800.00
Surplus	461,936.30
	$6,805,599.55

[fol. 4] (4) That the debtor's authorized capital stock is as follows:

(a) 60,000 shares of no par value stock of which 17,000 shares consist of preferred stock and 43,000 shares of common stock.

(5) That petitioners further state that the general taxes levied for the year 1931 against certain real estate owned by said debtor in the sum of Thirty-eight Thousand, two hundred one and 32/100 Dollars ($38,201.32) are unpaid and in default with penalties accumulated thereon of Fifteen per cent (15%) on the first installment and Ten per cent (10%) on the second installment; that said debtor is in further default of additional general taxes for the year 1931, levied and assessed against other of said debtor's real estate in the sum of Three Thousand Two Hundred Fifty-one and 16/100 Dollars ($3,251.16), together with accumulated penalties of Fifteen per cent (15%) on the first installment and Ten per cent (10%) on the second installment, which taxes are now past due and in default. That the general taxes for the year of 1932 in excess of Thirty Thousand Dollars ($30,000.00) have been levied and assessed against said property and are now due and payable but are unpaid and in default; that in addition to the above default in taxes as above set forth the major portion of the sum of $20,000.00 and accrued interest, as shown on said balance sheet set forth in Paragraph 3, being due to Greenebaum Sons Investment Company, is now past due and in default.

(6) That as shown by the above statement of assets and liabilities, debtor has an insufficient amount of quick assets with which to meet its existing liabilities; that it has a large [fol. 5] funded indebtedness aggregating $1,978,500.00, and that a large amount of taxes are now due and about to accrue upon the property of said debtor; that there are unsecured creditors whose claims are now due in an amount in excess of $20,000.00.

(7) That the debtor corporation is unable to meet its debts as they mature.

(8) That there is pending in the Circuit Court of Cook County, Illinois as case numbered 34C 3720 a Chancery proceeding for the dissolution of said debtor corporation and

for the appointment of a receiver; said Circuit Court has not appointed a receiver for said debtor corporation and no decree of dissolution has been entered in said proceedings.

(9) That said debtor, within four (4) months next preceding the date of the filing of this petition, committed an act of bankruptcy in that it did heretofore, to-wit, on February 16, 1934, convey, transfer and assign to the Dickinson Feed and Seed Company, a corporation recently organized under and by virtue of the laws of the State of Minnesota, all of its machinery, equipment and inventory located in what is known as its Minneapolis plant, which property was valued on the books of the debtor in excess of $160,000.00 but was transferred without consideration and not in the due course of business.

(10) That under date of June 4, 1934 said debtor corporation sent a letter to your petitioners and the other holders of its bonds in which said debtor stated, among other things: "It may be necessary in a short time to ask the co-operation of the bondholders in some readjustment of the Company's financial structure".

[fol. 6] (11) That the debtor has not filed a petition or an answer in this, or any other court under section 77B of the Bankruptcy Act as amended and supplemented, and that no other voluntary or involuntary proceeding in bankruptcy is pending under said Section 77B of the Bankruptcy Act.

(12) That there is need for relief under said Section 77B, in that the said debtor has a large and profitable business but is unable to meet the obligations of its funded indebtedness and capital structure, and that your petitioners are unable to obtain the relief in any other legal and equitable manner and unless this Honorable Court shall take jurisdiction of the subject matter of this petition and administer the assets of the debtor, irreparable damage and loss will result to your petitioners and others interested in the debtor corporation.

(13) That your petitioners propose that the debtor shall effect a reorganization as provided for in said section 77B, and will submit a plan therefor at such time as may be fixed by your Honorable Court.

(14) That this petition is filed in good faith and is not collusive or for the purpose of obtaining any preference or unproper advantage for any one creditor over any other; that this Honorable Court issue its injunction restraining all other creditors, stockholders, all parties in interest, from filing any suits, at law or in equity, or interfering in any manner with the business of said corporation pending final adjudication or reorganization under decree of this Court.

(15) That in accordance with the provisions of said Section 77B this petition has been duly executed by your petitioners.

[fol. 7] Wherefore, your petitioners pray that service of this petition with a subpoena, may be made upon The Albert Dickinson Company, a corporation, as provided by said Bankruptcy Act, as amended and supplemented; that the debtor be requested to file an answer to this petition within ten (10) days after the service of a copy of such petition upon it; that this petition be approved and that your Honorable Court proceed thereon, in accordance with the provisions of said Section 77B.

Noble D. Wolf, Joseph W. Finnell, F. M. Green, Petitioners; Melville, Samuels & Pretzel, Henry Blumberg, Leo L. Stone, Attorneys for Petitioners.

[fol. 8] *Duly sworn to by Noble D. Wolf et al. Jurat omitted in printing.*

———

Served this writ on the within named The Albert Dickinson Co., a corporation, by delivering a copy thereof to A. B. Dickinson, Vice President, an agent of said corporation this 23rd day of June, 1934.

The President of said Corporation not found in my District.

H. C. W. Laubenheimer, U. S. Marshal, by Henry Glaubke, Deputy.

Marshal's Fees, 1 Services $2.00, — Miles —. Total $2.00.

[File endorsement omitted.]

[fol. 9] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER GRANTING LEAVE TO AMEND PETITION

Upon stipulation of the parties hereto, It Is Hereby Ordered that the petitioners herein be and they are given leave to amend their petition herein by striking therefrom Paragraph numbered (9) thereof.

Enter:

Barnes, Judge.

September 10, 1934.

[fol. 10] IN UNITED STATES DISTRICT COURT

[Title omitted]

AMENDMENT TO CREDITORS' PETITION—Filed Sept. 10, 1934

Joseph W. Finnell, Noble D. Wolf and F. M. Green, petitioners herein, hereby amend the petition heretofore filed herein by striking therefrom Paragraph numbered (9) of said petition.

Joseph W. Finnell, Noble D. Wolf and F. M. Green, Petitioners, by Melville, Samuels & Pretzel, Their Attorneys. Henry Blumberg & Leo L. Stone.

[File endorsement omitted.]

[fol. 11] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF THE ALBERT DICKINSON COMPANY, ALLEGED DEBTOR, TO THE PETITION HEREIN AS AMENDED—Filed September 10, 1934

The Albert Dickinson Company, alleged Debtor, hereinafter referred to as the "Debtor", for answer to the petition herein as amended, says:

1. The Debtor admits the allegations of Paragraph 1 of the petition.

2. The Debtor admits that the petitioners are the owners respectively of the Debtor's bonds referred to in Paragraph 2 of the petition.

3. The Debtor admits that the amount of the provable claims against the Debtor evidenced by said securities exceeds the present value of said securities by more than One Thousand ($1,000.00) Dollars, although the Debtor is informed and believes, and therefore avers, that the actual value of the property mortgaged as security for said bonds is in excess of the total amount of the bond issue of which they are a part.

4. The Debtor admits that the balance sheet set forth in Paragraph 3 of said petition is a substantial copy of the balance sheet of the Debtor setting forth its financial condition as shown by its books as of January 31, 1934.

[fol. 12] 5. The Debtor admits that its authorized capital stock is as set forth in Paragraph 4 of the petition. Of said authorized capital stock nine thousand, four hundred ninety (9,490) shares of preferred stock without par value (entitled to preference on liquidation of $100.00 per share plus 6% cumulative dividends) and forty-two thousand, six hundred fifty-six (42,656) shares of common stock without par value are issued and outstanding.

6. The Debtor admits that it is in default in payment of taxes levied upon its property for the years 1931 and 1932 substantially as set forth in the petition and in the payment of certain obligations to Greenebaum Sons Investment Company, and that it is at present unable to meet its debts as they mature.

7. The Debtor admits that there is pending in the Circuit Court of Cook County, Illinois, a prior proceeding in equity receivership; that neither the Debtor nor anyone else, other than the petitioners herein, has filed a petition or answer in this or any other court under Section 77(b) of "An Act to Establish a Uniform System of Bankruptcy throughout the United States", approved July 1, 1898, and acts amendatory thereof and supplementary thereto (referred to herein and in the petition as the "Bankruptcy Act"); that there is need for relief under said Section 77(b); and that this Court has jurisdiction of the Debtor and its assets under said section.

8. The Debtor is in the business of buying, selling, storing, processing and otherwise dealing in seeds and in poul-

try and other animal feeds. This business has been carried on by the Debtor since its incorporation in 1886 and prior to that time, since 1855, by Albert Dickinson, who was one of the incorporators and the original principal stockholder [fol. 13] of the Debtor. The business is of great value and the intrinsic value of Debtor's assets far exceeds the amount of its liabilities. Owing, however, to the current depression, which has existed in agriculture for the past ten years and more, the income and working capital of the Debtor have become greatly depleted so that it is not possible for the Debtor to pay its fixed charges as they become due and payable.

9. It is to the best interests of the creditors and stockholders of the Debtor that a reorganization be effected under the supervision of the Court and to that end that this Court approve the petition as amended and the answer herein, and take jurisdiction pending such reorganization of the property and business of the Debtor. The Debtor proposes to effect such reorganization and joins in the prayer of the petition that this Court take such jurisdiction and proceed herein in accordance with the provisions of Section 77 (b) of the Bankruptcy Act.

10. The Debtor represents that pending reorganization, the Debtor's business can be most economically and efficiently carried on by the present management and that it is to the interests of the creditors and stockholders of the Debtor that the present management be continued in possession and control of the property and business of the Debtor until final approval of a reorganization plan, subject to the orders of this Court and as provided in said Section 77(b).

11. This answer is filed in good faith and is neither collusive nor for the purpose of obtaining any preference for any one creditor or any party in interest over any other creditor or other party in interest, or for any class of parties in interest over any other class of parties in interest, save as such classes are lawfully entitled to such preferences, if any.

The Albert Dickinson Company by A. B. Dickinson, President. Tenney, Harding, Sherman & Rogers, Attorneys for the Debtor.

[File endorsement omitted.]

[fol. 14] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER APPROVING PETITION AND ANSWER, ETC.—Sept. 10, 1934

1934

On due consideration of the petition herein as amended of Joseph W. Finnell, Noble D. Wolf and F. M. Green, Petitioners, and the answer of The Albert Dickinson Company, the debtor herein, the Court finds:

(a) That it appears from said petition and answer that the debtor is an Illinois corporation having its principal place of business at Chicago, Illinois, in this district, and is a corporation which could become bankrupt under Section 4 of "an Act to establish a uniform system of bankruptcy throughout the United States," approved July 1, 1896, and acts amendatory thereof and supplementary thereto, (hereinafter referred to as the "Acts of Congress relating to Bankruptcy"), and the present operations of which do not exclude it under Section 77B of said Act, and that this Court has jurisdiction of the parties and the subject matter of this proceeding:

(b) That said petition states, and said answer admits, that petitioners are creditors of the debtor having provable claims against it amounting in the aggregate in excess of the value of the securities held by them, to $1,000. or over; [fol. 15] that the debtor had not prior to the filing of said petition filed a petition or answer under said Section 77B; that the debtor is unable to meet its debts as they mature; that a prior proceeding in equity receivership is pending against the debtor; and that petitioners propose that the debtor shall effect a reorganization.

(c) That said answer either by averment or by admission of the allegations of the petition, in addition to the facts heretofore referred to, sets forth the nature of the debtor's business; a brief description of its assets, liabilities, capital stock and financial condition; the nature of said prior proceeding in equity receivership and the name of the court in which it is pending; the facts showing the need for relief under said section; that although the intrinsic value of the assets of the debtor exceeds its liabilities, the debtor is un-

able to meet its debts as they mature; and that the debtor desires to effect a plan of reorganization;

(d) That it appears to the satisfaction of the court that said petition and said answer comply with said Section 77B, and that said petition and answer have been filed in good faith.

It is Therefore Ordered:

(1) Said petition and answer are hereby approved as properly filed under Section 77B of Chapter VIII of the Acts of Congress relating to Bankruptcy.

(2) The debtor hereby is temporarily continued in possession of its estate.

(3) The debtor is authorized to operate its business until the further order of this court and the debtor shall have all the title to and shall exercise, consistently with the provisions of said Section 77B, all the powers of a trustee appointed pursuant to said section, subject at all times to the control of this court and to such limitations, restrictions, terms and conditions as this court may from time to time impose and prescribe and, without limiting the generality of the foregoing, shall have full power and authority to do [fol. 16] all things necessary or convenient in the operation of said business and the maintenance and preservation of said estate; to employ, discharge and fix the compensation of all such managers, agents, accountants and employees, other than officers, it may deem necessary or advisable for the proper conduct of the business; to buy and sell merchandise and supplies; to render services for cash or on credit; and to enter into new contracts incidental to the normal and usual operation of the business; to purchase or otherwise acquire, for cash or on credit, such material, appliances, instruments, equipment, supplies and other property as may be necessary or advisable in connection with the administration of the estate of the debtor and the normal and usual operation of its business, and to keep said estate insured to such an extent as it may deem advisable; to vote or cause to be voted any and all stock owned by the debtor; to collect and receive all the rents, issues, income, tolls and profits and all outstanding accrued or accruing accounts, things in action and credits due or owing to the debtor and to hold and retain all moneys received to the end

that the same may be applied under this or the further orders of this court. Any information, schedules, statements, declarations, affidavits and other instruments or documents which may, pursuant to the provisions of said Section 77B of Chapter VIII of the Acts of Congress relating to bankruptcy be required of the debtor, and any and all petitions, applications, requests or other instruments or documents, which may be filed in this proceeding by the debtor, may be executed by the President or the Vice President and the Treasurer of the debtor, or any one of them, [fol. 17] or otherwise as the debtor may by proper corporate action determine, and any such instrument or document so executed shall be deemed to have been duly executed and filed by the debtor unless and until the lack of authority of the officer or officers so executing the same shall have been determined by this court.

(4) The debtor is authorized, in its discretion, from time to time until the further order of this court, to pay and discharge out of any funds now or hereafter coming into its hands and available for such purposes:

(a) all expenses and charges incurred in the operation of the business hereby authorized and in preserving and maintaining the estate of the debtor.

(b) all claims for accrued wages of agents, officers and employes for services rendered prior to the date of this order, but remaining unpaid at the date hereof, and all operating and administrative expense heretofore accrued and unpaid for materials furnished, goods sold or services rendered prior to the date of this order but remaining unpaid at the date hereof, to the end that the operation of the business of the debtor may not be interfered with or interrupted;

(c) all taxes and charges of the nature thereof, lawfully incurred in the operation of the business or imposed upon [fol. 18] said property so far as it may deem such payments necessary or advisable in connection with the preservation of its property and the operation of its business.

(5) The debtor shall be allowed until the 30th day of October, 1934 (unless the time shall be extended further by order of this court), within which to reject contracts and leases of the debtor executory in whole or in part. Each such rejection shall be indicated by notices to that

effect, in writing, served upon the other party or parties to such contracts and leases and filed of record in this proceeding, and the continued operation by the debtor under any of said contracts and/or leases, within said period allowed for disaffirmance as the same may from time to time be extended shall not be deemed to conclude the debtor in respect of said election or to constitute an election.

(6) Pending the further order of this court, the debtor is hereby authorized and empowered to institute, prosecute and defend, compromise, adjust, intervene in or become a party to such suits, actions, proceedings at law, in equity or in admiralty, including ancillary proceedings in any Court or Courts of the United States, as may in its judgment be necessary or expedient for the protection, maintenance and preservation of the property and assets of the debtor and the conduct of its business or the carrying out of the terms and provisions of this order, and likewise to defend, compromise and adjust, or otherwise dispose of, any and all claims, suits, actions and proceedings instituted against it and also to appear in and conduct the prosecution [fol. 19] or defense of any action, suit or proceeding, or to adjust or compromise any action, suit or proceeding now pending in any court by or against the debtor where such prosecution, defense or other disposition of such action, suit or proceeding will in its judgment be advisable or expedient for the protection of the property and assets of the debtor.

(7) The debtor shall close its present books of account as of the close of business on the 10th day of September, 1934, and shall open new books of account as of the opening of business on the 11th day of September, 1934, and cause to be kept therein due and proper accounts of the earnings, expenses, receipts and disbursements of the debtor hereunder and the debtor shall preserve proper vouchers for all payments made on account thereof, and shall deposit the moneys coming into its hands in such of the banks in which funds of the debtor are presently deposited as shall be selected by the debtor, or in such other bank or banks as shall be selected or approved by this court. The debtor may continue to make deposits in and draw checks on any of its commercial bank accounts, but any bank or other depositary upon which such checks are drawn shall not have any duty to ascertain that such checks are drawn for proper

purposes but may honor and pay all properly drawn checks in the same manner as before the filing of the petition herein and without other or further liability in connection therewith.

(8) In the event that the debtor is, at the hearing hereinafter ordered, continued in possession of its estate and authorized to continue the operation of its busines-, it shall, not later than the 30th day of November, 1934, file with the Clerk of this court a statement of the assets and liabilities of the debtor, as of the close of business on the date of this order, and at such time as this court may hereafter direct, file such statements of operations, schedules and submit such other information as may be required by said Section 77B or as this court may from time to time direct.

[fol. 20] (9) Until the further order of this court, and except in this proceeding, all creditors and stockholders and all persons claiming or acting by, through or under them, and all sheriffs and marshals and other officers, agents, attorneys, proctors, representatives, servants and employes, and all other persons, associations and corporations are hereby enjoined and restrained from instituting or prosecuting any action at law or suit or proceeding in equity or admiralty against the debtor in any court of law, or equity, or admiralty, or before any association, organization or arbitration by referee or umpire, or other court or tribunal, or otherwise, or from executing or issuing or causing the execution or issuance, or the issuing out of any court of any writ, process, summons, attachment, subpoena, replevin, execution or other proceeding for the purpose of impounding or taking possession of or interfering with any property owned by or in the possession of the debtor, or owned by the debtor and in the possession of any of its officers, agents, or employes, and all sheriffs, marshals and other officers and their deputies, representatives and servants, the creditors of the debtor and all other persons, associations and corporations are hereby enjoined and restrained from removing, transferring, disposing of or attempting in any way to remove, transfer or dispose of or in any way interfere with any property, assets, or effects in the possession of or owned by the debtor or in the possession of any of its officers, agents or employes, and from doing any act or thing whatsoever to interfere with the possession and management by the debtor of its property and assets or in any way to interefere with it in the discharge of its duties

[fol. 21] hereunder or to interfere in any manner, during the pendency of this proceeding, with the exclusive jurisdiction of this court over the debtor and its property.

(10) This court reserves the full right and jurisdiction to make, from time to time, such orders appointing a trustee or trustees of said debtor's estate with all the title and powers of a trustee appointed pursuant to Section 44 of the Acts of Congress relating to bankruptcy, including, if this court shall so order, the power to operate the business of said debtor, and the same powers as those exercised by an equity receiver to the extent consistent with said Section 77B; fixing the time within which any reorganization shall be proposed, accepted and confirmed; requiring the debtor or trustee or trustees if appointed, to file such schedules and submit such information as may be necessary to disclose the conduct of the debtor's affairs, and the fairness of any proposed plan fixing a reasonable time within which claims and interests of creditors and stockholders may be filed or evidenced and allowed; providing for the division of creditors and stockholders into classes according to the nature of their respective claims and interests; and, in general, such orders amplifying, extending, limiting or otherwise modifying this order as to this court may at any time seem proper.

(11) The debtor is authorized from time to time to apply to this court for such other directions and instructions as it deems necessary or advisable in the due performance of its duties hereunder, and the right is reserved to all persons who may become parties hereto to apply to this court for any other or further directions and instructions to the debtor.

[fol. 22] 11. The hearing on the question of whether the Court shall make permanent this order retaining the debtor in possession, or shall appoint a Trustee or Trustees of the debtor's estate, or enter such other and further order or orders amplifying, extending, limiting or otherwise modifying this order as to the court may seem proper, is hereby set for October 5, 1934, at ten o'clock A. M. Notice of such hearing shall be given to the creditors and stockholders of the debtor in such form and manner as may be provided by further order, of this court.

Enter:

John P. Barnes, Judge.

Dated: September 10, 1934.

[fol. 23] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER CONFIRMING PLAN OF REORGANIZATION—Feb. 23, 1938

Pursuant to previous orders of court this cause has come on to be heard upon the Plan of Reorganization filed herein February 23, 1935, as amended in accordance with the orders entered herein on and prior to May 14, 1935, (referred to herein as "the Original Plan") and on the changes and modifications in the Original Plan heretofore filed herein and attached to and incorporated in the order of this court entered herein on December 30, 1937, (the Original Plan and said changes and modifications being referred to collectively as the Amended and Modified Plan) and upon the Reports of Carl R. Chindblom, Special Master, filed herein on October 26, 1936, April 10, 1937 and February 4, 1938, respectively, and the documents transmitted by the Special Master with any of said reports, and upon objections to said Amended and Modified Plan and evidence and argument of counsel in support of said Plan and said objections. The Court, having read and considered said Amended and Modified Plan and said Reports and said other documents and having heard said evidence and argument of counsel, Finds, Adjudges and Decrees:

1. The provisions of the order entered May 14, 1935, and the provisions of said order entered December 30, 1937, with respect respectively to the mailing and publication of no-
[fol. 24] tice of the hearing on the Original Plan and of the hearing on said changes and modifications therein, and with respect respectively to the mailing of the Original Plan and of said changes and modifications to the creditors and stockholders of the Debtor, have been duly complied with. The hearing on the Original Plan was duly continued by orders of this court to December 30, 1937, upon which date and at such hearing on the Original Plan said changes and modifications were proposed by the Debtor, and by Percy Cowan, Edgar N. Greenebaum, Julian H. Levi, Walter A. Wade and S. S. Fuhrman constituting the Bondholders' Committee acting under and pursuant to a certain Deposit Agreement dated August 1, 1934, with respect to the First Mortgage bonds of the Debtor, and by Charles H. Albers, as Receiver of the Ridgely Farmers State Bank, as holder

of certain of said bonds. The hearing on the Original Plan and on said changes and modifications was duly continued to this date by orders of this court entered herein, and due and timely notice of this hearing has been given to all creditors and stockholders of the Debtor as required by the orders of this court herein and by Section 77B of "An Act to Establish a Uniform System of Bankruptcy throughout the United States" approved July 1, 1895, as amended, herein referred to as "the Bankruptcy Act".

2. This proceeding was instituted in good faith and was properly brought under the provisions of Section 77B of the Bankruptcy Act and all proceedings to date have been in uniformity therewith and with the law.

3. The Original Plan has been properly proposed herein by the Debtor and said changes and modifications therein have been properly proposed as aforesaid and again at this [fol. 25] hearing by the Debtor and said Bondholders' Committee and by said Charles H. Albers as Receiver of the Ridgely Farmers State Bank, a holder of certain bonds of the Debtor.

4. An order was entered herein on September 30, 1934, classifying claims of all creditors, stockholders and holders of any interest in the debtor and providing for the filing of all claims. Due notice of such classification and of the provisions of said order with respect to the filing of the claims has been given to all creditors and stockholders of the Debtor.

5. No objection has been filed to said classification by any of the creditors or stockholders of the Debtor and said classification is in accordance with their respective claims and interests.

6. The claims affected by the Amended and Modified Plan are all included in Classes 3, 5, 6 and 7 of said classification. Claims of all creditors and stockholders affected by the Amended and Modified Plan have been filed. A summary of such claims as allowed and the disposition of objections thereto and of the number of acceptances of the Amended and Modified Plan in each class of claims affected by the Amended and Modified Plan is as follows:

A. Class 3—First Mortgage Bonds

(a) Pursuant to order of this Court, Central Republic Trust Company as successor Trustee under the trust deed

securing Debtor's first mortgage bonds filed a claim on behalf of all the holders of said bonds. Said claim was for [fol. 26] $1,978,500 in principal amount of bonds, being the entire principal amount of said bonds issued and not theretofore retired. Said claim included bonds in the principal amount of $60,500 which was issued but held in the treasury of the Debtor unpledged and are to be cancelled under the Amended and Modified Plan. Said claim therefore should be reduced to $1,918,00- the aggregate principal amount of all first mortgage bonds of the Debtor outstanding, the holders of which are entitled to participate in the Plan.

(b) In addition to the claim of Central Republic Trust Company claims were filed as follows:

(i) By Greenebaum Sons Investment Company as Reorganization Depositary appointed by order of this Court on behalf of the owners of bonds in the principal amount of $652,000 deposited with said Reorganization Depositary. With said claim was filed a list of the depositors of said bonds and the amount deposited by each of them.

(ii) By Percy Cowan, Edgar N. Greenebaum, Walter A. Wade and S. S. Fuhrman, as Bondholders' Committee under said Deposit Agreement dated August 1, 1934, on behalf of the owners of bonds in the principal amount of $606,000 deposited under said Deposit Agreement. With said claim was filed a list of the depositors of said bonds and of the amount deposited by each of them.

[fol. 27] (iii) By individual owners of bonds in the aggregate principal amount of $16,000 deposited with the Reorganization Depositary and also included in its claim as well as in the claim of Central Republic Trust Company.

(iv) By individual owners of bonds in the aggregate principal amount of $3,000 deposited under said Deposit Agreement dated August 1, 1934 and also included in the claim of said Bondholders' Committee as well as in the claim of Central Republic Trust Company.

(v) By individual owners of bonds not deposited either with the Reorganization Depositary or under said Deposit Agreement, in the aggregate principal amount of $38,000, also included in the claim of Central Republic Trust Company. None of the bonds included in these last-numbered claims was deposited with said claims with the exception

of bonds in the aggregate principal amount of $4,500 attached to and filed with the claim of Nicholas C. Hagen.

(c) The Debtor filed objections to all claims of individual bondholders referred to in Items (iii) (iv) and (v) above, on the ground of duplication and on the ground that inadequate proof of ownership accompanied the claims, and also filed objections to so much of the claim of Central Republic Trust Company as represented bonds for which other claims were filed.

(d) Since the claim of Central Republic Trust Company includes all bonds outstanding, and therefore includes all bonds for which separate claims were filed it is not neces-[fol. 28] sary to pass upon the merits of such separate claims. The claim of Central Republic Trust Company is allowed for bonds in the aggregate principal amount of $1,918,000, being all bonds outstanding which are to be replaced by new securities under the Amended and Modified Plan. It is unnecessary to determine the interest accrued on the bonds for which said claim is made since all bonds are treated uniformly under the Amended and Modified Plan with respect to interest due.

(e) To avoid duplication, all separate claims filed, including claims described in Items (i), (ii), (iii), (iv) and (v) above, are disallowed and Debtor's objections to the claims referred to in Items (iii), (iv) and (v) are sustained without prejudice, however, to the right of the respective owners of bonds upon whose behalf such separate claims were filed, upon showing of ownership of bonds upon which claims were filed, to receive in exchange therefor the new securities to be issued to Debtor's bondholders under the Amended and Modified Plan.

(f) It follows from the foregoing that claims in Class 3 have been filed and allowed for all members of said Class in the total principal amount of said claims, being $1,918,000. Acceptances in writing of the Amended and Modified Plan have been filed by the holders of claims in this Class in the total principal amount of $1,359,000 which is more than the required two-thirds majority of all claims in this Class.

[fol. 29] (g) Among said acceptances is the acceptance of Greenebaum Sons Investment Company as holder of a claim on Debtor's notes in the aggregate principal amount of

$29,000 and on bonds of the Debtor in the same principal amount held as collateral to said notes. In the Amended and Modified Plan it is provided that this claimant shall be treated as the owner of said $29,000 in principal amount of bonds held by it as collateral for Debtor's said notes—and upon the exchange of said bonds for the securities to be issued therefor under the Amended and Modified Plan (or the deposit of said securities with a depositary for exchange as the Court may direct) the indebtedness on the notes secured by said bonds will be cancelled and released. This claim is therefore included in claims under Class 3 of the Plan.

B. Class 5—Unsecured Creditors

(a) The only claims filed in Class 5 are:

(i) Claim for $4,662.41 by the Sanitary District of Chicago including $3,224.91 balance due on contract for construction of a dock for the Debtor and $1,437.50 for rental due on October 1, 1934, for rental on property leased by the Debtor. This claim was reduced by stipulation to $3,224.91 for rental and that sum has since been paid in cash by the Debtor as required under said lease. This claim is therefore extinguished.

(ii) A claim by The Dickinson Company on notes in the principal amount of $339,743.20 and accrued interest, being [fol. 30] notes of the Debtor for money advanced by the claimant. No objection was filed to said claim and it is allowed. The Dickinson Company has filed an acceptance in writing of said Amended and Modified Plan.

(b) It follows from the foregoing that all members of this Class have filed their acceptances in writing to the Amended and Modified Plan.

C. Class 6—Preferred Stockholders

A claim was filed by the Debtor for the holders of 9,490 shares of preferred stock of the Debtor, being all the preferred stock issued. This claim should be reduced by 52 shares issued and held in the Treasury of the Debtor which are to be cancelled under the Amended and Modified Plan. No objections were filed to said claims and it is allowed for 9,438 shares of Preferred Stock of the Debtor, the holders of which, on behalf of whom the claim was filed, being all

the members of this class. The holders of 8,117 shares of said preferred stock have filed written acceptances of the Amended and Modified Plan. Therefore, more than the required majority of the claims in this class have accepted the Amended and Modified Plan.

D. Class 7—Common Stockholders

A claim was filed by the Debtor for the holders of 42,656 shares of the common stock of the Debtor, being all the common stock issued and outstanding. No objection was filed to said claim and it is allowed for 42,656 shares of common stock of the Debtor, the holders of which, on behalf of whom [fol. 31] the claim was filed, being all the members of this class. The holders of 42,562 shares of said common stock have filed written acceptances of the Amended and Modified Plan. Therefore, more than the required majority of the claims in this Class have accepted the Amended and Modified Plan.

[fol. 32] 7. The court is satisfied, by reason of the number and amount of securities of the Debtor outstanding in the classes affected by the Amended and Modified Plan and the extent of the public dealing therein, that the preparation of a statement showing what, if any, claims in said classes have been purchased or transferred by those accepting the Amended and Modified Plan after the commencement or in contemplation of this proceeding and showing the circumstances of such purchase and transfer, is impractical and therefore finds that said statement need not be filed.

8. The Debtor has filed herein a verified statement in form and manner as required by the Judge setting forth that there are no contracts of the Debtor which are executory in whole or in part except certain contracts of sale of merchandise upon which delivery has not been completed made in the ordinary course of business of the Debtor, and setting forth that no unexpired leases have been rejected or surrendered.

9. The Amended and Modified Plan is fair and equitable and does not discriminate unfairly in favor of any class of creditors or stockholders of the Debtor and is feasible and complies with the provisions of sub-division (b) of said Section 77B and has been accepted in writing and such acceptance has been filed in this proceeding by or on behalf of creditors holding more than two-thirds in amount of each

class whose claims have been allowed and would be affected by said Amended and Modified Plan and by or on behalf of more than one-half of each class of the stockholders of the Debtor as required by the provisions of said Section 77B. All provisions of said Section 77B relating to said Amended and Modified Plan and the acceptance and confirmation thereof have been complied with to make the same effective [fol. 33] and binding upon the Debtor and all of the bondholders and creditors of the Debtor and all holders of any interest in the assets of the Debtor, whether or not their claims have been filed.

10. The offer of the Amended and Modified Plan and its acceptance are in good faith and have not been made or procured by any means or promises forbidden by the Bankruptcy Act.

11. All amounts to be paid by the Debtor or the corporation referred to in the Amended and Modified Plan as the New Operating Company for fees, services or expenses incident to the reorganization are to be subject to the approval of the judge and no amount for services or expenses shall be paid to any party except those which shall be approved by the judge.

12. The Debtor and the New Operating Company will be authorized by charters under "The Business Corporation Act of Illinois" and by applicable state and federal laws upon confirmation of the Amended and Modified Plan of Reorganization, to take all action necessary to carry out the Amended and Modified Plan of Reorganization.

13. The Debtor is not a utility subject to the jurisdiction of any regulatory commission or commissions or any regulatory authority or authorities created by the laws of any state or states and the provisions of sub-division (e) Clause (2) of Section 77B of the Bankruptcy Act do not apply.

14. Securities to be issued pursuant to said Amended and Modified Plan are to be issued to existing creditors and stockholders of the Debtor in the process of a bona fide reorganization of the Debtor under the supervision of this court in exchange for the claims of such creditors and stock- [fol. 34] holders. The said securities are therefore exempt from the provisions of the Federal Securities Act of 1933 approved May 27, 1933 as amended and the Illinois Act en-

titled "An Act Relating to the Sale or Other Disposition of Securities and Providing Penalties for the Violation Thereof and to Repeal Acts in Conflict Therewith", approved June 10, 1919, as amended.

15. No plan for the reorganization of the Debtor, which complies with the requirements of Section 77B of the Bankruptcy Act, has been proposed or presented in this court except the Amended and Modified Plan presented by the proponents thereof.

16. This Court has jurisdiction of the parties hereto and of the subject matter, all required notices have been given and the proceedings to date have been regular and comply in all respects with Section 77B of the Bankruptcy Act.

17. Sufficient information has been submitted to the Court to disclose the conduct of the Debtor's affairs and the fairness of the Amended and Modified Plan, and said information is sufficient in lieu of the schedules required by Section 7 of the Bankruptcy Act.

18. The Court has considered all objections to the Amended and Modified Plan and considers them without merit. The Amended and Modified Plan is confirmed in all respects and all objections filed or made thereto are overruled.

19. The Debtor and all parties herein are hereby authorized to take any and all steps and perform any and all acts necessary to consummate the Amended and Modified Plan and the orders of this Court relative thereto, all under the supervision and control of this Court. The Debtor shall [fol. 35] report in writing to this Court on or before March 12, 1938 on the acts and things done and performed in the execution of said Amended and Modified Plan of Reorganization.

20. No change or modification which is either material or adverse to the interest of any creditor or stockholder of the Debtor has been made by this order and the Amended and Modified Plan as provided for in this order complies with the provisions of Subdivision (b) of 77B of the Bankruptcy Act and has been accepted as required by the provisions of subdivision (e) Clause (1) and the provisions of subdivision (f) have been complied with in respect thereof.

21. The corporation to be formed under the Plan, referred to in said Plan and herein as the "New Operating Company" shall assume and agree to pay in full all taxes and other liabilities or debts due or to become due from the Debtor to the United States of America or any of its officers, agencies, or departments. Such liabilities shall have the same priority and preference over claims of the New Operating Company with respect to the assets thereof, as would lie against the assets of the Debtor, had these proceedings not intervened, and the United States of America, its officers, agencies or departments shall be granted the same remedies against the New Operating Company and its assets with regard to the collection of such liabilities as they had against the Debtor. All statutes of limitation upon the collection of such claims shall be suspended during the time these proceedings are pending and for such additional period of time as the collection of such claims or any part thereof shall be postponed. Subject to its approval the court shall retain jurisdiction over the assets to be transferred to the New Operating Company and over [fol. 36] the New Operating Company for the purpose of carrying out and giving effect to any and all provisions of the Plan and the decree confirming the same insofar as said Plan affects and applies to tax and other claims of the United States of America, its officers, agencies or departments.

22. Real estate taxes to be paid by the Debtor from assets remaining to it after the transfer of assets to the New Operating Company as provided in the Amended and Modified Plan and personal property taxes to be paid by the New Operating Company shall be in the amount as adjudicated to be due or otherwise to be ascertained in such manner as may be provided by future order in this proceeding.

23. The Court reserves jurisdiction herein to consider and pass upon claims for taxes and all other claims not affected by the Plan and leave is given to the Debtor and any creditor or stockholder of the Debtor to file objections to such claims on or before March 14, 1938. The Court further reserves jurisdiction to make such further orders as may hereafter be deemed necessary or proper in connection with the carrying out of the terms and provisions of said Amended and Modified Plan and of this order and terminating this cause.

24. All persons desiring compensation for services rendered or reimbursement for expenses incurred in connection with this proceeding and the Amended and Modified Plan are hereby ordered and directed to file with the Clerk of this Court, on or before March 12, 1938, their verified petitions for such allowances and this cause is hereby continued until March 14, 1938, at the hour of 10:00 o'clock A. M. before this Court, without further notice, for hearing on said petitions.

[fol. 37] 25. The Court hereby appoints Walter A. Wade, Herbert E. Hillebrecht and Orlo A. Montague as the trustees to act under the stock trust agreement provided for under the Plan.

26. The hearing on all matters pending in these proceedings and for the entry of a final decree shall be held on March 14, 1938, at 10:00 o'clock A. M. before this Court, and this cause is hereby continued to such date and time without further notice.

Enter:

Barnes, Judge.

Dated February 23, 1938.

Exceptions hereby taken to entry of this order.
Benjamin H. Miller, Attorney for Objectors, D. C. Glasser et al.

[fol. 38] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER AMENDING ORDER CONFIRMING PLAN

The order confirming the plan of reorganization rendered February 23, 1938, is hereby amended by striking out the name of Orlo O. Montague in the paragraph numbered "25" thereof and substituting in the place and stead thereof the name of Benjamin Wham.

Barnes, Judge.

March 5, 1938.

[fol. 39] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ALLOWING FEES AND DISBURSEMENTS

This Matter coming on to be heard on the application of the various parties in interest for the allowance of fees and disbursements, and the Court having read and examined the various applications and petitions filed, and having read and examined the testimony taken before the Special Master in connection with said applications, and having read and considered the Master's Report filed in connection with said applications and said testimony, and the Court having further heard the arguments of counsel, and being fully advised in the premises,

It is Hereby Ordered that:

(1) Messrs. Henry Blumberg, Leo S. Samuels and Leo S. Stone, attorneys for the petitioning creditors, are hereby allowed the sum of Three Thousand Dollars ($3,000.00) for services rendered, and One Hundred Thirty-Four Dollars and Forty-Eight Cents ($134.48) for disbursements.

(2) Messrs. Glenn, Real & Browning, Messrs. Rathje, Hinckley, Barnard & Kulp, and Mr. Norman C. Barry, as attorneys for certain creditors, are hereby allowed the sum of Ten Thousand Dollars ($10,000.00) for services rendered.

[fol. 40] (3) Messrs. Poppenhusen, Johnston, Thompson & Raymond, attorneys for the First Mortgage Bondholders' Committee, are hereby allowed the sum of Thirteen Thousand Dollars ($13,000.00) for services rendered and the sum of One Hundred Sixty-One Dollars and Ninety-Eight Cents ($161.98) for disbursements.

(4) Messrs. Edelson, Edelson & Wise, attorneys for certain creditors are hereby allowed the sum of Six Thousand Dollars ($6,000.00) for services rendered.

(5) Messrs. Percy Cowan, Edgar N. Greenebaum, Walter A. Wade and Julian H. Levi, as members of a First Mortgage Bondholders' Committee, are hereby allowed the sum of Two Thousand Dollars ($2,000.00) for services rendered, and the sum of Nine Hundred Forty-Five Dollars and Eighty-Five Cents ($945.85) for disbursements.

(6) Mr. Rudolph G. Mueller, Secretary to the First Mortgage Bondholders' Committee, is hereby allowed the sum of Two Thousand Dollars ($2,000.00) for services rendered.

(7) Greenebaum Investment Company is hereby allowed the sum of Two Thousand Four Hundred Forty-Three Dollars and Seventy-Five Cents ($2,443.75) for services rendered as Depositary.

(8) Mr. Mayer Karasik is hereby allowed the sum of One Thousand Eight Hundred Sixteen Dollars and Ninety Cents ($1,816.90) for disbursements.

(9) Henry Fechheimer is hereby allowed the sum of Two [fol. 41] Hundred Ninety Dollars ($290.00) for services rendered, said sum to be in addition to the Seven Hundred Dollars ($700.00) already received from Mayer Karasik.

(10) Benjamin H. Miller, attorney for certain creditors, is hereby allowed the sum of Five Hundred Dollars ($500.00) for services rendered.

(11) Carl R. Chindblom, Special Master, is hereby allowed the sum of Two Hundred Seventy-Five Dollars ($275.00) for services rendered, and Twenty-Five Dollars ($25.00) for expenses.

(12) William J. Snyder, Court Reporter, is hereby allowed the sum of Three Hundred Eighty-Nine Dollars and Seventy-Five — ($389.75) for services rendered.

The Court Further Finds that the services and disbursements for which allowances are made are reasonably worth, and the usual and customary charge for such services and disbursements in this district are not less than, the sums allowed; and the Court Further Finds that the value to the estate involved in this proceeding, of the respective services and disbursements, for which allowances are herein made, is not in excess of the respective amounts allowed.

It is Further Ordered that no payments in excess of 75% of the amount allowed shall be made on account of the foregoing allowances for services until a final decree has been entered in this cause and the case closed.

Messrs. Percy Cowan, Edgar N. Greenebaum, Walter A. Wade and Julian H. Levi hereby object and except to the entry of the foregoing Order.

Enter:

(Barnes), Judge.

Dated October 26, 1938.

[fol. 42] IN UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF APPEAL—Filed Dec. 5, 1938

To the Clerk of the District Court of Said District:

Notice is hereby given that the Dickinson Industrial Site, Inc., successor to The Albert Dickinson Company, Debtor, by Wham & O'Brien and Winston, Strawn & Shaw, their attorneys, hereby appeals to the Circuit Court of Appeals for the United States Circuit Court of Appeals for the Seventh Circuit from an order of said District Court of October 26, 1938, in which said District Court fixed and allowed certain compensation to certain parties to the reorganization proceedings entered in this action.

Wham & O'Brien, Winston, Strawn & Shaw, Attorneys for Appellant, The Dickinson Industrial Site, Inc., successor to The Albert Dickinson Company.

[File endorsement omitted.]

[fols. 43-44] Bond on appeal for $250.00 approved and filed Dec. 23, 1938, omitted in printing.

[fol. 45] IN UNITED STATES DISTRICT COURT

[Title omitted]

PRAECIPE FOR RECORD—Filed Dec. 23, 1938

To the Clerk of the District Court:

You are hereby requested to prepare the Record in the above entitled cause in connection with the appeal allowed by the United States Circuit Court of Appeals for the Seventh Circuit (No. 6816) on December 13, 1938, to consist of the following:

(1) Creditors' petition filed June 13, 1934.
(2) Amended creditors' petition filed September 10, 1934.

(3) Answer of The Albert Dickinson Company, filed September 10, 1934.

(4) Plan of Reorganization filed February 23, 1935.

(5) Amended and Modified Plan of Reorganization filed December 30, 1937

(6) Decree confirming Plan entered February 23, 1938.

(7) Petition for fees filed by Percy Cowan, Edgar N. Greenebaum, Walter A. Wade and Julian H. Levi, as members of the First Mortgage Bondholders' Committee, filed March 12, 1938.

(8) Transcript of hearing before Special Master Carl R. Chindblom, filed August 17, 1938.

(9) Memorandum of the Court filed October 24, 1938.

(10) Order allowing fees, entered October 26, 1938.

[fol. 46] (11) Statement of evidence, when approved.

(12) Notice of lodgment of statement of evidence and proof of service thereof.

(13) Praecipe for record and proof of service thereof.

You are requested and authorized to certify said Record to the United States Circuit Court of Appeals for the Seventh Circuit on or before January 12, 1939.

Samuel E. Hirsch, Julian H. Levi, Abraham Greenspahn, Attorneys for Appellants.

[File endorsement omitted]

[fol. 47] IN UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE—Filed December 23, 1938

To: Wham & O'Brien, 231 So. LaSalle St.; Winston, Strawn & Shaw, 38 So. Dearborn St., Attorneys for Dickinson Industrial Site, Inc.

Please take notice that we have today, December 23rd, 1938, filed with the Clerk of the District Court our Praecipe for Record in the above entitled cause to be certified on or before January 12, 1939, to the Circuit Court of Appeals in Case No. 6816, a copy of which Praecipe for Record is attached hereto and herewith served upon you.

Samuel E. Hirsch, Julian H. Levi, Abraham Greenspahn, Attorneys for Appellants.

Received a true and correct copy of Appellants' Praecipe for Record mentioned in the above and foregoing Proof of Service, this 23 day of December, A. D. 1938.

Winston, Strawn & Shaw, Wham & O'Brien.

[File endorsement omitted]

[fol. 48] IN UNITED STATES DISTRICT COURT

[Title omitted]

PRAECIPE—Filed December 23, 1938

To the Clerk of the United States District Court for the Northern District of Illinois Eastern Division.

SIR:

Pursuant to the notice of appeal filed in the above entitled proceedings by The Dickinson Industrial Site, Inc., a corporation (formerly known as The Albert Dickinson Company), Debtor, on December 5, 1938, and Section 250 of "An Act to Establish a Uniform System of Bankruptcy Throughout the United States" approved July 1, 1898, as amended by "The Chandler Act" approved June 22, 1938, and effective September 22, 1938, you are hereby requested to authenticate and transmit to the office of the Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, Chicago, Illinois, the original papers filed in said proceedings, and, without limiting the generality of the foregoing, the following:

1. Every and all petitions for allowances of compensation and reimbursement for expenses.

2. Every and all answers or objections filed to such petitions for allowances of compensation and reimbursement for expenses.

[fol. 49] 3. Order of reference to Carl R. Chindblom, Esq., of the petitions for allowances of compensation and reimbursement for expenses.

4. Stenographic Report of hearings before Carl R. Chindblom, Esq., on such reference.

5. Any opinion of the District Court pertaining to the allowances of compensation and reimbursement for expenses.

6. Order of October 26, 1938, allowing compensation and reimbursement for expenses.

7. Notice of Appeal filed by The Dickinson Industrial Site, Inc., a corporation (formerly known as The Albert Dickinson Company), Debtor, on December 5, 1938.

8. Certificate of the Clerk of the District Court of the names of the parties to whom he mailed copies of the notice of appeal and the date of mailing.

9. Bond on appeal filed December 23, 1938.

10. This Praecipe and proof of service thereof.

11. Any order hereafter entered pertaining to said appeal or to the transmission of the original papers filed in said proceedings to the Clerk of the United States Court of Appeals for the Seventh Circuit.

12. Certificate of the Clerk of the District Court.

Dated at Chicago, Illinois, this 23 day of December, 1938.

Wham & O'Brien, Winston, Strawn & Shaw, Attorneys for The Dickinson Industrial Site, Inc., Appellant.

[File endorsement omitted]

[fol. 50] IN UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE—Filed December 28, 1938

To:

Clerk of the District Court of the United States, for the Northern District of Illinois, Eastern Division, Federal Building, Chicago, Illinois.

Mr. Leo B. Samuels, 77 West Washington Street, Chicago, Illinois.

Messrs. Glenn, Real & Browning, 135 South La Salle Street, Chicago, Illinois.

Mr. Norman C. Berry, 77 West Washington Street, Chicago, Illinois.

Messrs. Edelson, Edelson & Wise, 100 North La Salle Street, Chicago, Illinois.

Mr. Edgar W. Greenebaum, c/o Greenebaum Investment Company, 11 South La Salle Street, Chicago, Illinois.

Mr. Julian H. Levi, 38 South Dearborn Street, Chicago, Illinois.

Mr. Mayer Karasik, Edelson, Edelson & Wise, 100 North La Salle Street, Chicago, Illinois.

Mr. Henry Blumberg, 1 North La Salle Street, Chicago, Illinois.

Mr. Leo S. Stone, 134 North La Salle Street, Chicago, Illinois.

Messrs. Ratje, Hinckley, Barnard & Kulp, 100 West Monroe Street, Chicago, Illinois.

Messrs. Poppenhusen, Johnston, Thompson & Raymond, 11 South La Salle Street, Chicago, Illinois.

Mr. Percy Cowan, c/o Greenebaum Investment Company, 11 South La Salle Street, Chicago, Illinois.

Mr. Walter A. Wade, 38 South Dearborn Street, Chicago, Illinois.

Mr. Rudolph G. Mueller, c/o Greenebaum Investment Company, 11 South La Salle Street, Chicago, Illinois.

Mr. Benjamin R. Miller 350 North Milwaukee Avenue, Libertyville, Illinois.

Please Take Notice that on the 23d day of December, 1938, we filed in the office of the Clerk of the District Court of the [fol. 51] United States, for the Northern District of Illinois, Eastern Division, a praecipe requesting said Clerk to authenticate and transmit to the Clerk of the United States Circuit Court of Appeals for the Seventh Circuit the original papers filed in the above-entitled proceedings, a true and correct copy of which is herewith served upon you.

Please Take Further Notice that on Wednesday, the 28th day of December, 1938, at the opening of Court in the forenoon, or as soon thereafter as counsel may be heard, we shall appear before the Hon. John P. Barnes, one of the Judges of said Court, or in his absence before such other Judge as may be sitting in his place and stead, and then and there ask the Court for the entry of an order directing said Clerk to comply with said praecipe, at which time and place you may appear if you see fit.

Wham & O'Brien, Winston, Strawn & Shaw, Attorneys for The Dickinson Industrial Site, Inc., Appellant.

STATE OF ILLINOIS,
County of Cook, ss:

Kay Eldridge, being duly sworn, on his oath deposes and says that he served the attached notice and copies of the

prsecipe therein referred to by enclosing copies of said notice and praecipe in envelopes addressed to the various persons at the addresses beneath their names in said notice with proper amount of postage stamps placed thereon and placing said envelopes so addressed and stamped in the United States mail chute in the First National Bank Building, Chicago, Illinois on December 23, 1938, at about the hour of 5:00 o'clock in the afternoon.

Kay Eldridge.

Subscribed and Sworn to before me this 28th day of December, A. D. 1938. Mae E. Burgess, Notary Public. (Seal.)

[File endorsement omitted.]

[fol. 52] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER DIRECTING TRANSMITTAL OF ORIGINAL PAPERS

This cause having come on to be heard on the motion of Wham & O'Brien and Winston, Strawn & Shaw, attorneys for The Dickinson Industrial Site, Inc., a corporation, (formerly known as The Albert Dickinson Company), Debtor, for an order directing the Clerk of this Court to authenticate and transmit to the Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, pursuant to the notice of appeal filed herein on December 5, 1938, by said The Dickinson Industrial Site, Inc., and Section 250 of "An Act to Establish a Uniform System of Bankruptcy Throughout the United States" approved July 1, 1898, as amended by "The Chandler Act" approved June 2, 1938, and effective September 22, 1938, on due notice, and the Court having heard the arguments of counsel, and being fully advised in the premises,

It Is Hereby Ordered that the Clerk of this Court shall forthwith arrange chronologically, authenticate and transmit to the Clerk of the United States Circuit Court of Appeals for the Seventh Circuit the original papers filed in these proceedings. To the entry of which order Glenn, Real

& Browning and Poppenhusen, Johnston, Thompson & Raymond object and except.

Enter:

Barnes, United States District Judge.

Dated: Chicago, Illinois, this 28th day of December, 1938.

[fol. 53] Clerk's Certificate of transmittal omitted in printing.

[fols. 54-55] [Caption omitted]

[fol. 56] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

In the Matter of

THE ALBERT DICKINSON COMPANY, a Corporation, Debtor

PERCY COWAN, EDGAR N. GREENEBAUM, WALTER A. WADE and Julian H. Levi, as a Bondholders' Committee Acting under Deposit Agreement Dated August 1, 1934, Petitioners-Appellants,

vs.

THE DICKINSON INDUSTRIAL SITE, INC., and THE ALBERT DICKINSON COMPANY, Debtor, Respondents-Appellees

PETITION FOR LEAVE TO APPEAL—Filed Nov. 25, 1938.

To the Honorable Judges of the United States Circuit Court of Appeals, for the Seventh Circuit:

Now come Percy Cowan, Edgar N. Greenebaum, Walter A. Wade and Julian H. Levi, as members of a First Mortgage Bondholders' Committee under Deposit Agreement dated August 1, 1934, by their attorneys, Poppenhusen, Johnston, Thompson & Raymond, and Wilhartz & Hirsch, and respectfully ask leave to appeal from an order entered in the District Court of the United States for the Northern District of Illinois, Eastern Division, on October 26, 1938, and show:

(1) The order which petitioners seek to appeal from is an order entered by the District Court on October 26, 1938,

[fol. 57] fixing the compensation of various parties and counsel in a proceeding for corporate reorganization pursuant to the provisions of Section 77B of Chapter 8 of the Bankruptcy Act of 1898. That order allowed aggregate compensation of some $40,000, but allowed to the First Mortgage Bondholders' Committee (the petitioners here) only $2,000 upon an application made by them for $20,000. A certified copy of the order of October 26, 1938, is attached to this petition as Exhibit "A", and made a part hereof.

(2) The relevant facts in connection with this application for leave to appeal naturally group themselves about several distinct subjects:

(a) The extent and nature of the Debtor's business, and the problems which had to be dealt with in a reorganization.

(b) The accomplishment of the Bondholders' Committee.

(c) The reasons given by the District Court with respect to the reduction in the compensation allowed to the Bondholders' Committee.

I

The business conducted by the Debtor was originated in 1854 by Albert Dickinson, and concerned itself with the processing and sale at wholesale of agricultural seeds, poultry and other animal foods and popcorn. The business was incorporated in 1887 as "The Albert Dickinson Company" and has been conducted on a national scale with sales made to customers all over the United States. Since 1915 the Debtor has occupied buildings erected on its own land at 35th Street and California Avenue, in Chicago. Its industrial site there is between 40 and 50 acres in extent, and [fol. 58] has excellent railway and water facilities, with direct connections to many railroads. One of the assets of the Debtor is a 99 year lease dated in 1915, from the Sanitary District of Chicago, covering 11½ acres of property immediately north of the property owned in fee. In addition to the Chicago property the Debtor maintains various county receiving stations. Prior to 1934 the Debtor had executed and sold a First Mortgage Bond issue on all of its fee and leasehold properties in Chicago which, at the time of reorganization, was outstanding in the amount of $1,978,500.

Due to economic conditions and changes in marketing conditions the Debtor's business suffered a severe decline.

The lack of adequate credit facilities and forced disposition of bank loans, deprived the Debtor of its working capital and as a result the Debtor defaulted in the payment of its First Mortgage Bonds and interest thereon. The Bondholders' Committee was organized on August 1, 1934, and called for the deposit of bonds and eventually came to represent approximately 70% of the outstanding bonds.

First attempts at reorganization were along the lines of converting the outstanding First Mortgage Bonds into a preferred stock, and securing new working capital through a new first mortgage loan on all of the real estate of the Debtor in amount of somewhere between $500,000 and $750,000. This culminated in a Plan of Reorganization filed on February 25, 1935, in the proceedings in the District Court. A copy of this Plan of Reorganization is attached to this petition as Exhibit "B".

This plan was later abandoned because of the inability of the Debtor to secure the required mortgage. In November [fol. 59] of 1937 the original Plan of Reorganization was modified in many important particulars. A copy of this Amended Plan of Reorganization, which was confirmed by the District Court, is attached to this petition as Exhibit "C". This Plan of Reorganization differs from the earlier plan in the following important particulars, among others:

(1) The Debtor yields up all of its interest in the real estate and buildings. The mechanics of this transaction are embodied in certain paragraphs of the Plan of Reorganization, as follows:

"1. The Debtor will retain the mortgaged real estate and transfer to a new operating company, in exchange for all the stock of that Company, all Debtor's other assets and business (except stock and bonds of the Debtor held in its treasury) subject to a $150,000 interest or charge thereon to be satisfied and discharged in cash as hereinafter provided.

"2. All the outstanding stock of the Debtor will then be turned into the Debtor's treasury in exchange for all the stock in the new operating company except the portion of the preferred stock of the new operating company which will be delivered in satisfaction of The Dickinson Company's claim as hereinafter provided. All the stock of the Debtor thus turned in—or stock trustees' certificates representing

the beneficial interest therein—will then be exchanged for Debtor's now outstanding bonds. Debtor's bondholders will thus become the sole beneficial owners of the corporation holding all the real estate now mortgaged to secure the bonds together with $150,000 out of the Debtor's other assets while the old stockholders and other creditors of the Debtor will no longer have any interest therein, but in lieu thereof will have the remaining assets and business,

"3. Appropriate changes in corporate names will be made so as to indicate that the Debtor corporation (then owned solely by the bondholders) is a real estate corporation and so as to permit the new operating company to carry on business under the name, 'The Albert Dickinson Company.' It is suggested that the new name of the Debtor, after all its stock passes to the bondholders, shall be 'Dick-[fol. 60] inson Industrial Site, Inc.' and it is thus referred to below."

(2) The Debtor's bondholders receive $150,000 from the current assets of the Debtor. This sum has actually been paid at this time.

(3) The Debtor then leases approximately 129,000 square feet of space at a rental of $24,600 a year to a new operating company. The Craver Dickinson Seed Company, which had never assumed any responsibility on any transactions carried on by the Debtor, joins in this lease as co-lessee. This co-lessee is a substantial company, with excellent financial responsibility.

Because of the fact that the Dickinson Company occupied at the time of the commencement of the proceedings practically all of the real estate pledged as security for the payment of the First Mortgage bonds, the difficulties of the Dickinson Company's business were intimately linked with any reorganization of the bondholders' position. This reorganization, therefore, was much more than an ordinary real estate reorganization, but in fact involved the readjustment of the affairs of a large industrial enterprise. The Debtor's gross sales in the year prior to the proceedings in bankruptcy amounted to in excess of $2,400,000. The Committee undertook a detailed and careful study of the problems of that business. Immediately after its organization, an investigation of the Dickinson Company was made by

an auditor employed by the Committee and later on in the proceedings, at the insistence of the Committee, the Trundle Engineering Company made an exhaustive examination of the operating policies of the Dickinson Company. The results of these activities were the discontinuance by the Debtor of operations in the feed industry which had proved unprofitable, as well as other corrections in its methods of operation.

[fol. 61] II

The Bondholders' Committee in this case is unique in that three of the members of that Committee directly represented large owners of first mortgage bonds of the Debtor. Mr. Walter Wade, a member of Winston, Strawn & Shaw, as Trustee of the Estate of Michael Espert, deceased, owned in excess of $57,000.00 of first mortgage bonds of the Debtor. Mr. S. S. Furman, who died prior to the presentation of the Amended Plan of Reorganization, owned in excess of $10,000 in first mortgage bonds of the Debtor. Mr. W. A. Hirsh, who was an original member of the Bondholders' Committee, represented himself and members of his family, who hold over $40,000 of First Mortgage Bonds of the Debtor. Upon Mr. Hirsh's death, he was succeeded by Mr. Julian Levi, a member of Wilhartz & Hirsch, representing the executor of the estate. None of these persons had any connection with the house of issue or the Dickinson Company.

The other two members of the Committee, Mr. Percy Cowan and Mr. Edgar Greenebaum, were officers of Greenebaum Sons Investment Company, the underwriter of the first mortgage issue. Mr. Cowan in addition personally represented the Rosenthal Estate, which owned approximately $50,000 of first mortgage bonds of the Debtor.

The Committee, because of the nature of the Debtor's affairs, which has been noted, was obliged to assume great responsibilities. This Committee in face-to-face negotiations with the Debtor arrived at the broad essentials of the Plan of Reorganization.

In addition, however, on November 11, 1937, as a result [fol. 62] of prior meetings between the Committee and the Debtor, important and valuable concessions were obtained by the Committee at a meeting attended by all of the members of the Committee and the senior executive officers of the Debtor. These concessions were:

(1) The obtaining by the Committee of the sum of $150,000 for the First Mortgage Bondholders, which sum has actually been collected and is now held for their benefit in the treasury of their company.

(2) The obtaining of the credit of the Craver Dickinson Seed Company, of Buffalo, as a co-lessee on the lease of the new operating company. The Craver Dickinson Seed Company is a corporation which has a net worth of over $100,000, and before this time had never assumed any responsibility with respect to the operations of the Dickinson Company in Chicago.

(3) The negotiation of a new lease covering 24,000 square feet of the Debtor's property to the new operating company and the Craver Dickinson Seed Company. The suggestion which had been made prior to this meeting of the Committee was that the new operating company occupy 322,000 square feet. The Committee succeeded in reducing this to 24,000 square feet and in having the new operating company assume the liability of removing the tanks and machinery from the remaining portion of the premises without cost to the Debtor, an enterprise which would have cost the Bondholders somewheres over $50,000. In addition to this advantage, the bondholders obtained additional space which can be and has been rented at rentals higher than that contemplated to be paid by the new operating company.

No one else in the proceedings can or does claim credit for these achievements, the importance and merit of which speak for themselves.

III

The District Court itself did not hear any of the evidence with respect to the applications for compensation made by the various parties. That testimony was heard before a [fol. 63] Master, who merely returned the transcript of the testimony taken, without comment. The District Court then, without further hearing, set the amount of compensation, and when questioned as to its reason for disallowing the Committee's claim for $20,000, and allowing only the sum of $2,000, stated that in his opinion in all 77B matters the lawyers did all the work and that accordingly he would not allow any compensation to the Committee beyond the sum of $2,000. A stenographic copy of the proceedings had

before the District Judge is attached to this petition as Exhibit "D".

Petitioners believe that a gr-evious error of law has been committed by the District Court in its allowance of but $2,000 to petitioners for their services in the reorganization of the Debtor. Petitioners believe that as a matter of law a Committee which performs services such as performed by these petitioners and set forth in paragraphs under II of this petition, is entitled to more than $2,000 in compensation; petitioners believe that any party to a reorganization proceeding who brings $150,000 in cash into the estate is entitled to compensation in excess of $2,000.

Wherefore petitioners pray that this Court may enter an order or orders herein in its discretion, granting leave to petitioners to appeal from the order entered in the District Court of the United States for the Northern District of Illinois on October 26, 1938, together with all other orders necessary to consummate and complete said appeal, and [fol. 64] that after hearing this Court enter an order reversing the order of the District Court entered on October 26, 1938.

Percy Cowan, Edgar N. Greenebaum, Walter A. Wade and Julian H. Levi, as a Bondholders' Committee acting under Deposit Agreement dated August 1, 1934, by Percy Cowan, Its Duly Authorized Agent.

Duly sworn to by Percy Cowan. Jurat omitted in printing.

[fols. 65-66] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

[Title omitted]

ASSIGNMENT OF ERRORS—Filed November 25, 1938

Now come Percy Cowan, Edgar N. Greenebaum, Walter A. Wade and Julian H. Levi, as members of a First Mortgage Bondholders' Committee under Deposit Agreement dated August 1, 1934, by their attorneys, Poppenhusen, Johnston, Thompson & Raymond, and Wilhartz & Hirsch, and assign errors in the entry of the order of October 26th,

1938, in the foregoing proceedings, which error is as follows:

(1) The District Court erred in allowing Percy Cowan, Edgar N. Greenebaum, Walter A. Wade and Julian H. Levi, as members of a First Mortgage Bondholders' Committee, the sum of $2,000 for services rendered and disallowing the application made by them for $20,000 compensation for services rendered.

Poppenhusen, Johnston, Thompson & Raymond, Wilhartz & Hirsch, Attorneys for Appellants.

[fol. 67] In United States Circuit Court of Appeals for the Seventh Circuit

[Title omitted]

Notice—Filed November 26, 1938

To Tenney, Harding, Sherman & Rogers, 120 South LaSalle St., 1845; Dickinson Industrial Site, % Benjamin Wham, 231 South LaSalle St., 1745:

You and Each of You Are Hereby Notified that on November 25, 1938, Petitioners filed a petition for leave to appeal and assignment of errors, together with a brief in support thereof, as per copy of petition, assignment of errors and brief herewith served upon you.

Poppenhusen, Johnston, Thompson & Raymond, Wilhartz & Hirsch, Attorneys for Petitioners.

Received a copy of the above notice, together with a copy of the petition, assignment of errors and brief therein referred to, this 26th day of November, A. D. 1938.

Tenney, Harding, Sherman & Rogers, Dickinson Industrial Site, Inc., Benjamin Wham, M.

[fol. 68] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

ORDER ALLOWING APPEAL—December 13, 1938

It is ordered by the Court that the petition of Percy Cowan, Edgar N. Greenebaum, Walter A. Wade and Julian H. Levi, as Members of a First Mortgage Bondholders' Committee under Deposit Agreement dated August 1, 1934, for leave to appeal from the Order or Decree of the District Court of the United States for the Northern District of Illinois, Eastern Division, entered on October 26, 1938, in the matter of The Albert Dickinson Company, Debtor, be, and it is hereby granted, and an appeal from said Order or Decree is hereby allowed.

It is further ordered that appellants file an appeal bond in the sum of two hundred and fifty dollars within 10 days from this date.

[fol. 69] RECITAL AS TO BOND

And afterwards, to-wit: On the twenty-second day of December, 1938, there was filed in the office of the Clerk of this Court, an Appeal Bond, which said Appeal Bond is not copied here.

IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

ORDER APPROVING BOND—December 22, 1938

It is ordered that the Appeal Bond filed this day in this cause be, and it is hereby approved.

[fols. 70-71] Citation, in usual form, showing service on Wham & O'Brien et al., filed Dec. 28, 1938, omitted in printing.

[fols. 72-73] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

APPEARANCE—Filed Jan. 10, 1939

The Clerk will enter our Appearance as counsel for appellees.

Walter A. Wade, 38 So. Dearborn St., Benjamin Wham, 231 So. La Salle St., Chicago, Illinois.

[fol. 74] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

[Title omitted]

MOTION OF THE APPELLEE, THE DICKINSON INDUSTRIAL SITE, INC., FORMERLY THE ALBERT DICKINSON COMPANY, TO DISMISS THE APPEAL ALLOWED HEREIN ON DECEMBER 13, 1938—Filed Jan. 10, 1939

Now comes the Appellee, The Dickinson Industrial Site, Inc., formerly The Albert Dickinson Company, by Benjamin Wham and Walter A. Wade, its attorneys, and makes this, its motion to dismiss the appeal heretofore allowed by this Court to Percy Cowan, Edgar N. Greenebaum, Walter A. Wade and Julian H. Levi, as a Bondholders' Protective Committee acting under deposit agreement dated August 1, [fol. 75] 1934, and states as the basis for its motion that this Court had no jurisdiction to allow said appeal. Attached hereto are the suggestions of the appellee in support of this motion.

Dickinson Industrial Site, Inc., by Walter A. Wade, Benjamin Wham, Its Attorneys. Walter A. Wade, Benjamin Wham, Attorneys for Dickinson Industrial Site, Inc.

[fol. 76] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

ORDER EXTENDING TIME, ETC.—January 10, 1939

It is ordered that the time to file a complete record on this appeal be, and it is hereby extended until the disposi-

tion of appellees' motion to dismiss said appeal, or until the further order of this Court.

It is further ordered that appellant's brief in opposition to said motion to dismiss be filed within five days from this date, appellees' reply to be filed within three days thereafter.

RECITAL AS TO BRIEFS

And afterwards, to-wit: On the sixteenth day of January, 1939, there was filed in the office of the Clerk of this Court, a Brief and Argument in Response to Motion to Dismiss, which said Brief and Argument is not copied here.

And afterwards, to-wit: On the twentieth day of January, 1939, there was filed in the office of the Clerk of this Court, Appellees' Reply to Appellant's Brief and Argument on Motion to Dismiss, which said Reply is not copied here.

[fols. 77-78] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

ORDER OF CONTINUANCE—January 20, 1939

It is ordered by the Court that the motion of appellees' to dismiss this appeal be, and it is hereby continued to the hearing of this cause on the merits.

[fols. 79-80] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

[Title omitted]

MOTION OF APPELLANTS FOR ORDER EXTENDING TIME WITHIN WHICH APPELLANTS ARE REQUIRED TO FILE THE RECORD HEREIN—Filed Jan. 27, 1939

Now come Appellants, Percy Cowan, Edgar N. Greenebaum, Walter A. Wade and Julian H. Levi, as a Bondholders' Committee acting under Deposit Agreement dated August 1, 1934, and respectfully move the court to extend the time within which Appellants shall be permitted to file

the record until after the disposition of the motions pending in Case No. 6842, and in support of said motion Appellants desire to call the attention of this Court to the affidavit of Julian H. Levi, one of Appellants and of counsel in this cause, and to the Suggestions hereto attached.

Percy Cowan, Edgar N. Greenebaum, Walter A. Wade and Julian H. Levi, as a Bondholders' Committee acting under Deposit Agreement dated August 1, 1934, Petitioners-Appellants, by Samuel E. Hirsch, Abraham Greenspahn, Julian H. Levi, Their Attorneys.

[fol. 81] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

[Title omitted]

MOTION TO CONSOLIDATE—Filed March 13, 1939

Now come The Dickinson Industrial Site, by their attorneys, Walter A. Wade and Benjamin Wham; and Percy Cowan, Edgar N. Greenebaum, Walter A. Wade and Julian H. Levi, as a Bondholders' Committee acting under Deposit Agreement dated August 1, 1934, by their attorneys, Julian H. Levi, and respectfully move the court:

(a) That these causes be consolidated and heard upon one record;

(b) That the record in the consolidated causes consist of the following:

(1) Creditors' petition filed June 13, 1934;
(2) Amended creditors' petition filed September 10, 1934;
(3) Answer of The Albert Dickinson Company filed September 10, 1934;
[fol. 82] (4) Plan of Reorganization filed February 23, 1935;
(5) Amended and Modified Plan of Reorganization filed December 30, 1937;
(6) Decree confirming Plan entered February 23, 1938;
(7) All petitions for fees filed by various parties herein;
(8) Order of reference to Carl R. Chindblom, as Special Master;
(9) Transcript of hearing before Special Master Carl R. Chindblom, filed August 17, 1938;

(10) Memorandum of the Court filed October 24, 1938;

(11) Order allowing fees entered October 26, 1938;

(12) Statement of evidence when approved and filed;

(13) Notice of lodgment of statement of evidence and proof of service thereof;

(14) Praecipe for record and proofs of service thereof;

(15) Notice of appeal filed in the District Court on December 5, 1938;

(16) Certificate of Clerk of the District Court of names of parties to whom he mailed copies of the notice of appeal and the date of mailing;

(17) Bond on appeal filed December 23, 1938, by Dickinson Industrial Site, Inc.;

(18) Order of December 23, 1938, directing the Clerk to authenticate and transmit to the Circuit Court of Appeals the original papers;

(19) Certificate of Clerk of the District Court to the record;

(c) that a rule be entered in the consolidated causes upon all parties to show cause, if any they have, why the appeal should not be heard upon the portions of the record hereinbefore enumerated;

(d) that this Court determine that the appeal docketed as Cause No. 6842 or the consolidated causes shall be heard upon the original papers or on a printed record;

and in support of said motion tender to the Court the Suggestions attached hereto.

[fol. 83] This motion is made without prejudice to motions heretofore made to dismiss the respective appeals.

The Dickinson Industrial Site, by Walter A. Wade, Benjamin Wham, Its Attorneys. Percy Cowan, Edgar N. Greenebaum, Walter A. Wade and Julian H. Levi, as a Bondholders' Committee acting under Deposit Agreement dated August 1, 1934, by Julian H. Levi, Its Attorney.

[fol. 84] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

ORDER SETTING CAUSE, ETC.—March 13, 1939

It is ordered that the record in this cause be not printed and that no briefs on the merits are required to be filed.

It is further ordered that this cause be set down for hearing on the merits and on all pending motions on Friday, April 14, 1939.

In United States Circuit Court of Appeals

[Title omitted]

Order Renewing Motion to Dismiss—April 14, 1939

It is ordered that the Motion of counsel for appellees' to Dismiss this appeal be, and it is hereby renewed and taken under advisement by the Court.

[fols. 85-86] In United States Circuit Court of Appeals

[Title omitted]

Order Denying Motion to Dismiss—May 22, 1939

It is ordered by the Court that the Motion of Appellees' to Dismiss this Appeal be, and it is hereby denied.

[fol. 87] In United States Circuit Court of Appeals, October Term, 1938, April Session, 1939

No. 6816

In the Matter of The Albert Dickinson Company, a Corporation, Debtor.

Percy Cowan, Edgar N. Greenebaum, Walter A. Wade and Julian H. Levi, as a Bondholders' Committee Acting under Deposit Agreement Dated August 1, 1934, Petitioners-Appellants,

vs.

The Dickinson Industrial Site, and The Albert Dickinson Company, Debtor, Respondents-Appellees

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

OPINION—Filed May 22, 1939

Before Evans, Sparks, and Kerner, Circuit Judges

EVANS, Circuit Judge:

This appeal is one of several taken from an order entered in the reorganization of the debtor, Albert Dickinson Co. In the order complained of the court fixed the compensation of attorneys and a bondholders' protective committee as follows:

Blumberg, Samuels and Stone, attorneys for petitioning creditors	$ 3,000
Glenn, Real & Browning, attorneys for $19,000 of bonds	$10,000
Poppenhusen, Johnston, Thompson & Raymond, attorneys for committee	$13,000
Edelson, Edelson & Wise, attorneys representing $20,000 of bonds	$ 6,000
Rudolph G. Mueller, Secretary to Committee	$ 2,000
Greenebaum Investment Co., depositary	$ 2,443.75
Mayer Karasik, for disbursements	$ 1,816.90
Henry Fechheimer	$ 290
Benjamin H. Miller, attorney for creditors	$ 500
Percy Cowan, Greenebaum, Wade and Levi, Members of the first mortgage bondholders' committee representing 70% of the bondholders	$ 2,000
Carl R. Chindblom, special master	$ 275
William J. Snyder, court reporter	$ 389.75

[fol. 88] The Appellee appealed from the allowances to all the aforesaid parties except the last three. The allowance to the firm of Glenn, Real & Browning, has been heretofore affirmed (Appeal No. 6842). The respondents—Karasik; Fechheimer and Miller; Poppenhusen, Johnston, Thompson & Raymond; Edelson, Edelson & Wise; Blumberg, Stone & Samuels—settled their differences while the appeal as to them was pending. Payments in full were made to Mueller, Secretary to the Committee, and Greenebaum Company, depositary. Of the several allowances of fees challenged there remains but one undisposed of, to-wit, the claim of the bondholders' protective committee, composed of Percy Cowan, Edgar N. Greenebaum, Walter A. Wade, and Julian H. Levi.

The District Court allowed this committee the sum of $2,000. It asked for and here contends that it should be allowed the sum of $20,000.

The Appellee argues that the appeal should be dismissed because not taken as the statute provides. It does not seriously dispute the asserted insufficiency of the allowance, but argues that there was not such abuse of discretion as to warrant our disturbing this award.

The Chandler Act was approved June 22, 1938, and became effective September 22, 1938. The petition for reorganization of debtor was approved September 10, 1934. The order from which this appeal was taken was entered October 26, 1938. The District Court never made any order declaring the Chandler Act applicable to these proceedings nor did this court. No application for such order was in fact made to either court.

Appellants, on November 25, 1938, and within thirty days from the entry of the order complained of, applied to this court for leave to appeal. We allowed the appeal. Appellee proceeded in the same way in appeal No. 6822. It applied to this court for leave to appeal from said order, on December 5, 1938. Its application was denied by this court.

As the law stood prior to the enactment of the Chandler amendment, it was well settled that an appeal from an order allowing compensation to attorneys and other parties entitled thereto in these reorganization cases rested with the Circuit Court of Appeals, which was required to exercise a discretion. Shulman v. Wilson-Sheridan Hotel Company, 301 U. S. 172.

[fol. 89] The committee's petition to appeal from the District Court's order of October 26, 1938, was granted by this court on December 13, 1938. Appellee contends that the appeal should have been perfected pursuant to Section 24a of the Chandler Act, which reads:

"The Circuit Courts of Appeals of the United States * * *, are hereby invested with appellate jurisdiction from the several courts of bankruptcy in their respective jurisdictions in proceedings in bankruptcy, either interlocutory or final, and in controversies arising in proceedings in bankruptcy, to review, affirm, revise, or reverse, both in matters of law and in matters of fact: * * * Provided further, That when any order, decree, or judgment involves less than

$500, an appeal therefrom may be taken only upon allowance of the appellate court.

"(b) Such appellate jurisdiction shall be exercised by appeal and in the form and manner of an appeal."

Section 250 of the Chandler Act reads:

"Appeals may be taken in matters of law or fact from orders making or refusing to make allowances of compensation or reimbursement, and may, in the manner and within the time provided for appeals by this Act, be taken to and allowed by the circuit court of appeals independently of other appeals in the proceeding, and shall be summarily heard upon the original papers."

Two other provisions of the Chandler Act are worthy of consideration:

Sec. 276c. "The provisions of section 77A and 77B of Chapter VIII * * * approved July 1, 1898, shall continue in full force and effect with respect to proceedings pending under those sections upon the effective date of this amendatory Act, except that— * * *

(2) If the petition in such proceedings was approved more than three months before the effective date of this amendatory Act, the provisions of this Chapter shall apply to such proceedings to the extent that the judge shall deem their application practicable * * *."

Section 6 b provides:

"Except as otherwise provided in this amendatory Act, [fol. 90] the provisions of this amendatory Act shall govern proceedings so far as practicable in cases pending when it takes effect; but proceedings in cases then pending to which the provisions of this amendatory Act are not applicable shall be disposed of conformably to the provisions of said Act approved July 1, 1898 * * *."

Counsel are unable to agree what law applies. While the appellee followed the same practice as the appellants, it now argues that appellants' appeal should be dismissed.

Construing all of the aforesaid sections together with the Bankruptcy Act in force before the Chandler Act, we conclude:

(1) The provisions of the Chandler Act govern this appeal.

(2) Where the court has not had occasion to pass upon the practicability of applying subdivision (2) of section 276(c), said subdivision (2) should be ignored.

(3) Because "this amendatory Act" (The Chandler Act) elsewhere expressly covers the subject of appeal, section 6(b) does not govern.

(4) Section 250 of the Chandler Act, being a specific provision, applies to appeals from orders fixing compensation or disbursements to attorneys who render services. The maxim generalia specialibus non derogant controls.

(5) Appeals from an order making an allowance of compensation or reimbursement to those entitled thereto, or who make claim for such compensation and are refused it by the District Court, are allowed only in the discretion of the Circuit Court of Appeals.

(6) All other appeals from orders or decrees entered by the courts of bankruptcy, except from judgments involving less than $500, must be taken as other appeals in equity suits, namely, as provided for by section 73 of the Rules of Civil Procedure.

Applying these conclusions to the facts in the instant case, we conclude that the appellants properly sought the allowance of their appeal on this court.

The motion to dismiss the appeal must therefore be denied.

On the merits of the appeal we are confronted by a fact [fol. 91] question,—the legitimate range of judicial discretion.

The debtor is a company which for fifty years successfully conducted a large business in seeds. Its sales in a single year reached an aggregate of $15,000,000. Changes in method of distribution and the financial upset and business depression of the early '30s proved too much for it to withstand, and section 77B of the Bankruptcy Act, when that amendment was enacted, became a harbor into which it sailed for rest and repairs.

At the time its outstanding bonded indebtedness was $1,900,000, which was in default; it owed $300,000 in taxes; its real estate was appraised at $2,500,000.

A bondholders' protective committee was immediately created by holders of substantial amounts of bonds, to-wit, $60,000, $50,000, $40,000, and $10,000.* Mr. Greenebaum, a member of the house of issu· was the fifth member of the committee.

It and the debtor immediately gave attention to a plan of reorganization which was subsequently submitted to the security holders. It contemplated a loan of $750,000 from the R. F. C. It failed because debtor was unable to negotiate the loan on terms which it could meet.

The committee hired auditors and a management engineer and made every effort to submit a more feasible plan of reorganization, acceptable to debtor and security holders. Several attorneys, representing smaller bondholders, cooperated. The problem was complex and perplexing. There were fewer petty and captious objections to proposals than usual, although there were differences of opinion. Postponements and delays occurred. Much time was necessarily devoted by all to the problem of reorganization which presented as many business as legal questions.

Finally, a proposal which met with favor was submitted, was somewhat modified, and later approved by the security holders and the court. The new plan provided, among other things, for debtor's raising $150,000 from an outside source, a reduction in the amount of floor space used by it, and the leasing of the balance and the securing of said lease. These were the outstanding advantages of the plan for which all [fol. 92] parties claim credit, but of which we think it might be better said—all parties contributed in greater or less degree.

When the plan was finally approved, appellants represented 70% of the security holders, or more than $1,250,000 (par value) of the bonds. They assert that in this particular case the bondholders' committee was as active as the attorneys for the committee or as the attorneys for any other party; that their voice was more authoritative, because without their approval no plan could become effective; that they were the party most instrumental in bringing $150,000 of additional capital and the securing of a paying lease, which meant revenue in the future. On this committee were two able lawyers.

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* The par value of the bonds must not be confused with actual value.

We fully sympathize with the District Court in its effort to conserve the property for the creditors. To do this and at the same time do justice to those who render meritorious service in a reorganization of this kind is no easy task. Differences of opinion as to the nature and value of services among the participating attorneys are well nigh inevitable.

We fully agree the amount of securities represented by a group or an attorney should not be the sole, or even the determining, factor in fixing the amount of compensation. Nor would we, on the other hand, by any means ignore it when passing on fees asked in most cases. It may and often does help in appraising the good faith, as well as the value of the services.

Another disturbing factor, present in many cases, and not entirely absent here, is the apparent duplication of services for which compensation is sought.

Appellants concede that in making the allowances, the trial court exercised a discretion, and that discretion should not be disturbed unless improvidently exercised. In other words, to disapprove, we must find there has been an abuse of discretion.

What is judicial discretion? How is its abuse determined? At best, it is a somewhat relative term. No standard or measuring stick has been or can be devised that may be successfully applied in all cases. It and the words used to define it are somewhat elastic. In Newton v. Consolidated Gas Co., [fol. 93] 259 U. S. 101, 105, the Court spoke of it as follows:

"* * * Discretion within intendment of the rule is a judicial one; it does not extend to arbitrary and unreasonable action; and our review is limited to the question of its improvident exercise."

In the last analysis it comes down to a question of the extent of the difference between the trial court's or the fact trier's judgment and the judgment of the reviewing tribunal. In bankruptcy cases it may at times be measured by the difference between the judgments of a master or a referee and that of the District Court. (In the Matter of Edward S. Duvall, et al., decided April 28, 1939.)

It must be conceded by all that in matters where differences are not large, we must hold the District Court's judgment is supreme. But we are not much nearer the goal of our inquiry—for our study merely shifts to what are the limits of said range.

At times we can define a term best by illustrating what it is not. When the distance between the amount allowed and the amount claimed is so great that we can not reconcile them, and the good faith rendition of meritorious service is admitted, we have a case which calls for modification.

Somewhat similar questions arise in tort actions wherein excessive or inadequate damages are allowed by a jury. Refusal to disturb the verdict of a jury or the judgment of the trial court thereon, when the amount is either grossly excessive or grossly inadequate, because the amount of damages is for the jury to decide, is an avoidance of judicial responsibility. The rule is the same whether the case involves fees or awards in damage actions. The duty to act is as clear and as impelling in one case as in the other.

The reorganization of this debtor was for the benefit of its creditors. Its past history, its large real estate holding, its value as a going concern, and other property of value to it in the operation of its business, should be saved if possible. In short, the conservation of the property was essential to the protection of the bondholders.

In order that such a reorganization take place, it was necessary for the bondholders themselves, or for attorneys representing them, or both, to render certain services. That there is much false and foolish action of no benefit to the debtor estates and devoid of intelligence and good faith in [fol. 94] many cases brought under Section 77B, does not affect the rule that compensation is due and should be awarded to those who render services of merit. The heavy expense of a reorganization seems an unavoidable consequence of our doing business through large corporations where large sums of money are borrowed from investors who are not well informed as to the character of the security issued to them. But it was a condition that confronted these bondholders when the mortgagor defaulted in its interest payments, and they then learned that their mortgage bonds failed to fully measure up to their once-held beliefs,—a condition that demanded action. We can not too severely condemn the action of those who attempt to profit out of the investors' distress and their lack of experience.

The expenses of foreclosures, reorganizations, and receiverships, heavy, yet unavoidable in any case, have, in some instances, been multiplied by studied efforts to delay proceedings and prolong receiverships, by unnecessary duplications of services by many counsel, by frivolous ob-

jections made by bondholders' counsel in an effort to create nuisance value and by other methods familiar to those who have had intimate contacts with reorganization proceedings brought under the Bankruptcy Act.

Avoidance of this undesirable situation can only be successfully attained by the court announcing early in the proceedings that for duplications of services no compensation will be allowed. In fact, we see no way of avoiding embarrassment and trouble save by the court's informing some of the attorneys, committees, and other agencies that their services will not be paid out of funds in the court's possession. In the absence of such action, the questions of the total amount of fees and distribution of said fees among the many applicants will surely arise to perplex those who are responsible for the reorganization.

In the instant case we have no such embarrassing situation. All of the allowances were modest. The allowance to bondholders' committee is the only item of which we have doubt. It was disposed of by a well-nigh complete rejection because the court entertained the view that bondholders' committees are, generally speaking, useless instrumentalities that accomplish little or nothing or which do nothing of benefit to the reorganization. This may be true in many cases, but it does not necessarily constitute a universal practice. According to members of the committee, it was not [fol. 95] true in this case and the record supports this statement. It came into existence upon the urgent request of holders of sizable numbers of bonds. Others joined them until seventy per cent of the holders of the entire bond issue spoke through this committee. Two of its members were lawyers with experience in 77B proceedings. Had they merely sought to multiply fees, they could have appeared separately and represented individuals as other counsel in this case appeared for groups of smaller creditors. Their refusal to thus stultify themselves commends their present position to our favorable consideration.

Unless the court is justified in refusing the committee any compensation, the services rendered necessitated an allowance in excess of $2,000. To compensate each of four members representing bonds of the face value of $1,300,000 for three years' work, at a total of $500 each, seems grossly inadequate.

The range within which the trial judge's discretion has free and uncontrolled play must have outside limitations,—

below and above which it can not go. That this committee was entitled to some compensation is conceded. The fact that the court made it an allowance is proof the court so concluded. It, of course, should not be denied compensation on the theory that most committees are supernumeraries and of no value in the reorganization of the debtor, if in truth and fact it showed itself to be a serviceable agency working in good faith for those who were vitally interested in recovering the largest possible amount for the creditors.

We are not unmindful that a dominant rule governing the allowance of fees is the one which limits the total amount of all fees to what the enterprise can reasonably bear. Of course, this does not mean that the total allowance should be divided to the total exclusion of any deserving applicant who has rendered meritorious and valuable services, and another claimant rendering like services, benefited. Testing the allowances by this standard no fault can be found with the total allowances.

The allowance of $2,000 to the bondholders' committee, upon what is clearly shown to be the services by them rendered, is so much below the actual value of its services and the benefits which accrued to the debtor, that it amounts to an abuse of discretion. Comparing allowances to others [fol. 96] who appeared in the action and upon the showing of services rendered, we are convinced that the allowance should not have been less than $10,000. In designating $10,000, we are not fixing the actual value of that service, but stating a sum below which an allowance can not be allowed to stand.

In other words, the range within which the judicial discretion may operate has the sum of $10,000 for its minimum. As in the case of excessive verdicts, the appellate court fixes the amount above which a verdict or judgment will not be allowed to stand. So here we fix the minimum.

The decree is modified by an allowance of $10,000 to the bondholders' committee. As modified, it is affirmed, appellants to recover their costs.

A true Copy:

Teste:

——— ———, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

[fol. 97] IN UNITED STATES CIRCUIT COURT OF APPEALS

6816

In the Matter of THE ALBERT DICKINSON COMPANY, a Corporation, Debtor. Percy Cowan, Edgar N. Greenebaum, Walter A. Wade & Julian H. Levi, as a Bondholders' Committee Acting under Deposit Agreement dated August 1, 1934

vs.

THE DICKINSON INDUSTRIAL SITE and THE ALBERT DICKINSON COMPANY, Debtor

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division

Before: Hon. Evan A. Evans, Circuit Judge; Hon. William M. Sparks, Circuit Judge; Hon. Otto Kerner, Circuit Judge.

JUDGMENT—May 22, 1939

This cause came on to be heard on the record from the District Court of the United States for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On Consideration Whereof: It is now here ordered, adjudged and decreed by this Court that the Order or Decree of the said District Court in this cause appealed from be, and the same is hereby modified by an allowance of $10,000.00 to the Bondholders' Committee, and as so modified the said Order or Decree of the said District Court, be, and the same is hereby affirmed.

It is further ordered that appellant's recover their costs.

[fols. 98-99] RECITAL AS TO PETITION FOR REHEARING, ETC.

And afterwards, to-wit: On the eighth day of June, 1939, there was filed in the office of the Clerk of this Court, a Petition for a Rehearing, which said Petition for a Rehearing is not copied here.

And afterwards, to-wit: On the seventeenth day of June, 1939, there was filed in the office of the Clerk of this Court, an Answer to Petition for Rehearing, which said Answer is not copied here.

[fol. 100] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

OCTOBER TERM, 1938, APRIL SESSION, 1939

No. 6816

In the Matter of THE ALBERT DICKINSON COMPANY, a Corporation, Debtor

PERCY COWAN, EDGAR N. GREENBAUM, WALTER A. WADE and Julian H. Levi, as a Bondholders' Committee acting under Deposit Agreement dated August 1, 1934, Petitioners-Appellants,

vs.

THE DICKINSON INDUSTRIAL SITE, INC., Formerly the ALBERT DICKINSON COMPANY, Debtor, Respondent-Appellee

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division

Before Evans, Sparks, and Kerner, Circuit Judges

OPINION ON PETITION FOR REHEARING—Filed June 24, 1939

EVANS, Circuit Judge:

Appellee, on this rehearing, strenuously assails the correctness of that part of our opinion which holds that appeals from orders making provision for compensation of counsel are allowable only in the discretion of the Circuit Court of Appeals. Inasmuch as this pronouncement was for the purpose of settling the practice, we have given the matter further consideration.

The deference we owe to, and the respect we have for [fol. 101] the views of, the Second Circuit Court of Appeals, which reached a different conclusion in London v. O'Dougherty, 102 F. (2d) 524, have added to our anxieties.

In reaching our conclusion we were guided by what we believed to be the intention of Congress in enacting the bankruptcy legislation, namely, the desire to expeditiously administer the estates of insolvents. The more recent amendments to the general bankruptcy act, which for the purpose of convenience might be called the reorganization provisions as distinguished from the liquidation sections of

the old act, should be similarly construed. Expedition in the reorganization of a debtor is as essential for the protection of creditors as is expedition in liquidations under the old bankruptcy act.

One of the possible methods of delay is through appeals. While the right to apply for an appeal in bankruptcy cases may be as important as in other suits, experience has demonstrated that there is a possibility for the misuse of the said right of appeal where reorganization of a debtor with many creditors holding valuable assets is about to be effected. Such a situation affords unusual opportunities for one avariciously inclined to create a nuisance value for a claim otherwise lacking in merit.

In other words, appeals may tie up the liquidation of the estate or the reorganization of the debtor, although the amount involved is relatively small.

It seems, for this reason, Congress has, in the old act as well as in the amended act, guarded against abuse by providing that the right of appeal shall not be an absolute one but, in some cases, allowable only in the discretion of the court of appeals.

Section 250 of the Chandler Act carries such an intention on the part of Congress. In construing this section, it is significant, first, that it deals specifically and exclusively with appeals taken from orders allowing compensation or reimbursements, and second, that it provides expressly for limitation of time within which the appeal may be taken and it also provides that such appeals "be taken to *and allowed by the Circuit Court of Appeals* independently of other appeals in proceedings and shall be summarily heard upon the original papers." In other words, Congress, by this section, was dealing specifically with the subject of appeals from an order allowing compensation to those who had helped in the reorganization of the debtor. The last [fol. 102] clause squarely indicates the necessity of prompt disposition of the appeal. The clause "allowed by the Circuit Court of Appeals" can not be ignored. It suggests an intent to avoid frivolous appeals and appeals for purpose of delay. It necessitates the exercise of a discretion by the Circuit Court of Appeals to the end that delays may be avoided. At the same time, it protects the rights of those who are sincerely convinced that an allowance was either inadequate or extravagant. Dealing as it does, spe-

cifically with this subject-matter, it should be construed as exclusive.

The petition for rehearing is denied.

A true Copy:

Teste:

——— ———, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

[fols. 103-104] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

ORDER DENYING PETITION FOR REHEARING—June 24, 1939

It is ordered by the Court that the Petition for a Rehearing of this cause be, and the same is hereby denied.

[fol. 105] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

[Title omitted]

MOTION OF APPELLEE TO CORRECT ORDER ENTERED BY THE CLERK ON MARCH 13, 1939—Filed July 11, 1939

Now comes the appellee, The Dickinson Industrial Site, Inc., by Benjamin Wham and Walter A. Wade and moves the court to correct the order entered by the clerk of this court, nunc pro tunc as of March 13, 1939 by adding thereto the further order that this cause shall be heard upon the original papers filed in cause No. 6842 in this court, so that said order will read as follows to-wit:

"It is ordered that the record in Cause No. 6842 in this court, consisting of the original papers, shall constitute the record in this cause, and that this cause shall be heard upon the original papers filed in cause No. 6842.

Further ordered that the record in this cause be not printed and that no briefs on the merits are required to be filed.

[fol. 106] Further ordered that this cause be set down for hearing on the merits and on all pending motions on Friday, April 14, 1939."

In support of said motion appellee attaches hereto the affidavit of George W. Ott.

The Dickinson Industrial Site, Inc., Appellee, by Walter A. Wade, Benjamin Wham, Its Attorneys. Walter A. Wade, Benjamin Wham, Attorneys for Appellee.

[fol. 107] [Title omitted]

AFFIDAVIT OF GEORGE W. OTT

George W. Ott, being first duly sworn, on oath deposes and says that he is an attorney associated with Walter A. Wade, one of the attorneys for the appellee Dickinson Industrial Site, Inc. in the above entitled cause and is duly authorized to make this affidavit on its behalf. Affiant further says that the attorneys for the appellants and the attorneys for the appellee in this cause filed their joint motion on March 13, 1939 for the consolidation of this cause with cause No. 6842 in this court and for the designation of a record upon which this cause could be heard and decided by this court.

[fols. 108-109] Affiant further says that upon the hearing of said motion this court ordered or directed that this cause should be heard upon the original papers filed in said cause No. 6842.

Affiant further says that the order of the clerk entered on March 13, 1939 is in words and figures as follows, to-wit:

It is ordered that the record in this cause be not printed and that no briefs on the merits are required to be filed.

Further ordered that this cause be set down for hearing on the merits and on all pending motions on Friday, April 14, 1939."

and fails to contain this order or direction of the court.

Affiant further says that said order should be corrected by amending the same to read as follows:

"It is ordered that the record in cause No. 6842 in this court, consisting of the original papers, shall constitute the record in this cause, and that this cause shall be heard upon the original papers filed in cause No. 6842.

Further ordered that the record in this cause be not printed and that no briefs on the merits are required to be filed.

Further ordered that this cause be set down for hearing on the merits and on all pending motions on Friday, April 14, 1939."

Affiant further says that unless said order of March 13, 1939 is corrected the record in this cause will fail to show upon what record of the District Court the appeal in this cause was heard and decided by this court, and, contrary to the fact, the record in this cause will show that no record of the District Court upon which the court could have heard and decided the appeal in this cause was before this court.

George W. Ott.

Subscribed and Sworn to before me this 11th day of July, 1939. Mae E. Burgess, Notary Public. (Seal.)

[fols. 110-111] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

[Title omitted]

MOTION OF APPELLEE TO STAY THE ISSUANCE OF THE MANDATE —Filed July 11, 1939

Now comes the appellee, The Dickinson Industrial Site, Inc., by Benjamin Wham and Walter A. Wade, its attorneys, and moves the court to stay the issuance of the mandate until the further order of this court, and in support of its said motion attaches hereto the affidavit of George W. Ott.

The Dickinson Industrial Site, Inc., Appellee, by Walter A. Wade and Benjamin Wham, Its Attorneys. Walter A. Wade, Benjamin Wham, Attorneys for Appellee.

[fols. 112-113] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

[Title omitted]

PROOF OF SERVICE—Filed July 11, 1939

To Julian Levi, Esquire, 38 South Dearborn St., Chicago, Ill.; Abraham Greenspahn, 11 South LaSalle Street, Chicago, Ill.:

Please Take Notice that we have this day filed in the office of the Clerk of the Circuit Court of Appeals for the 7th Circuit a motion for the correction of the order of said court entered March 13, 1939 and a motion for a stay of the issuance of the mandate of said court, copies of which motions together with the supporting affidavits are herewith served upon you.

Walter A. Wade, Benjamin Wham, Attorneys for Appellee.

Dated at Chicago, Illinois, this 11th day of July, 1939.

Received a copy of the above notice and motions therein referred to this 11th day of July, 1939.

Julian H. Levi, Abraham Greenspahn, Attorneys for Appellants.

[fol. 114] IN UNITED STATES CIRCUIT COURT OF APPEALS IN AND FOR THE SEVENTH CIRCUIT

[Title omitted]

REPLY OF APPELLANTS TO MOTION OF APPELLEE TO CORRECT ORDER ENTERED BY CLERK ON MARCH 13, 1939—Filed July 14, 1939

Now come Appellants, Percy Cowan, Edgar N. Greenebaum, Walter A. Wade and Julian H. Levi, as a Bondholders' Committee acting under Deposit Agreement dated August 1, 1934, by Julian H. Levi, and in response to the Motion heretofore filed herein by The Dickinson Industrial Site, Inc., Appellee, for the entry of an order nunc pro tunc as of March 13, 1939, say:

(1) Said order of March 13, 1939 which was entered herein by the Clerk was entered upon a petition of both

[fol. 115] Appellee and Appellants to consolidate this cause, which is No. 6816, and Cause No. 6842. The order which was entered by the Clerk of this Court on March 13, 1939 was entered in both this Cause No. 6816 and in Cause No. 6842, and Appellants believe accordingly that if the order of March 13, 1939 is to be amended nunc pro tunc, said order should also provide that upon motion of Appellee and Appellants Cause No. 6816 and Cause No. 6842 were consolidated.

(2) The order proposed by Appellee refers to "original papers". Appellants believe that said order should describe said papers as the original papers filed in the District Court of the United States in and for the Northern District of Illinois, Eastern Division, since the inception of the cause known as "In the Matter of The Albert Dickinson Company, a corporation, Debtor, No. 36189" which were transmitted to the Clerk of this Court by the Clerk of the District Court pursuant to order entered by the District Court on December 28, 1938, together with the transcript of testimony thereafter approved by the Judge of the District Court and filed in these proceedings.

Appellants accordingly suggest that if this Court enters an order nunc pro tunc correcting the order entered by the Clerk of this Court as of March 13, 1939, that such order should read as follows:

"Upon motion of The Dickinson Industrial Site, Inc., formerly the Albert Dickinson Company, Debtor, Appellee, and Percy Cowan, Edgar N. Greenebaum, Walter A. Wade and Julian H. Levi, as a Bondholders' Committee acting under Deposit Agreement dated August 1, 1934, Appellants,—

"It Is Hereby Ordered that Cause No. 6816 and Cause No. 6842 be and they hereby are consolidated.

[fol. 116] "It Is Further Ordered that the record in Cause No. 6842 in this Court consisting of all of the original papers filed in the District Court of the United States for the Northern District of Illinois, Eastern Division, in a cause therein pending known as 'In the Matter of The Albert Dickinson Company, Debtor, No. 56189', which papers were transmitted by the Clerk of said District Court to the Clerk of this Court pursuant to an order of Court entered by the District Court on December 28, 1938, upon application of The Dickinson Industrial Site, Inc., Appellee

herein, shall constitute the record in this cause as consolidated, and that this cause shall be heard and determined upon the papers filed in this Court and upon the said original papers.

"It Is Further Ordered that the record in this cause as consolidated be not printed and that no briefs on the merits are required to be filed.

"It Is Further Ordered that this cause as consolidated be set down for hearing on the merits and on all pending motions on Friday, April 14, 1939."

"It Is Further Ordered that the entry of this order shall not affect or modify the consolidation of Causes Nos. 6816 and 6842 on March 13, 1939."

In support thereof, Appellants attach hereto the affidavit of Julian H. Levi.

Percy Cowan, Edgar N. Greenebaum, Walter A. Wade and Julian H. Levi, as a Bondholders' Committee acting under Deposit Agreement dated August 1, 1934, Appellants, by Julian H. Levi, Abraham Greenspahn, Their Attorneys.

[fol. 117] [Title omitted]

AFFIDAVIT OF JULIAN H. LEVI

STATE OF ILLINOIS,
County of Cook, ss:

Julian H. Levi, being first duly sworn, upon oath deposes and says that he is an attorney and of counsel for Appellants, Percy Cowan, Edgar N. Greenebaum, Walter A. Wade and Julian H. Levi, as a Bondholders' Committee, in the above entitled cause, and is duly authorized to make this Affidavit on their behalf.

Affiant further states that on March 13, 1939, attorneys for Appellants and attorneys for Appellee in this cause [fol. 118] filed their joint motion for the consolidation of Cause No. 6816 with Cause No. 6842; that the order of court which was entered herein on March 13, 1939 was entered under the numbers 6816 and 6842, and that affiant believes that the purport and effect of said orders, and the intention of the court and all of the parties hereto was

that said causes be consolidated; that this court would not hear and dispose of the issues in Cause No. 6816 on a record filed in Cause No. 6842 unless said causes were consolidated; that the appeals in Cause No. 6816 and Cause No. 6842 were appeals taken by various parties from the same order of court entered in the District Court of the United States in and for the Northern District of Illinois, Eastern Division, on October 26, 1938, and that it was the intention of this court to do complete and speedy justice between all parties in the appeal in Cause No. 6816 and Cause No. 6842 in entering its order of March 13, 1939 herein.

Affiant accordingly believes that if this court is to amend the order noted by the Clerk herein on March 13, 1939 nunc pro tunc it should also note the consolidation of the causes and should further provide that the entry of the nunc pro tunc order shall not affect, change or modify the consolidation of said causes on March 13, 1939.

Affiant further states that he believes the designation of the original papers referred to in the proposed order submitted by Appellee is not clear and precise and does not indicate the content and scope of the original papers and the fact that they were transmitted to this court on motion [fols. 119-120] of Appellee made before the District Court.

And further affiant sayeth not.

Julian H. Levi.

Subscribed and sworn to before me this 13th day of July, A. D. 1939. Amy R. Brons, Notary Public. (Seal.)

[fol. 121] In United States Circuit Court of Appeals for the Seventh Circuit

[Title omitted]

Proof of Service—Filed July 14, 1939

To Walter A. Wade, 38 South Dearborn Street, Chicago; Benjamin Wham, 231 South LaSalle Street, Chicago.

Please Take Notice that we have this day filed in the office of the Clerk of the United States Circuit Court of Appeals in and for the Seventh Circuit the Reply of Appellants to the Motion of Appellee to correct the order entered by the Clerk on March 13, 1939, copy of which Reply to-

gether with the supporting Affidavit is herewith served upon you.

Julian H. Levi, Abraham Greenspahn, Attorneys for Appellants.

State of Illinois,
County of Cook, ss:

Irwin J. Askow, being duly sworn, upon oath deposes and says that he served the foregoing notice together with copies of the documents therein referred to upon Walter A. Wade and Benjamin Wham by United States Mail, postage prepaid, this 14th day of July, A. D. 1939.

Irwin J. Askow.

Subscribed and sworn to before me this 14th day of July, A. D., 1939. Amy R. Brons, Notary Public. (Seal.)

[fol. 122] In United States Circuit Court of Appeals

[Title omitted]

Order Amending Order Setting Cause, etc.—July 14, 1939

On motion of counsel for appellees', It is now here ordered that the order of this Court heretofore entered in this cause on March 13, 1939 be, and the same is hereby amended nunc pro tunc as of March 13, 1939, to read as follows:

"It is ordered that the record in cause No. 6842 in this Court, consisting of the original papers, shall constitute the record in this cause, and that this cause shall be heard upon the original papers filed in Cause No. 6842.

Further ordered that the record in this cause be not printed and that no briefs on the merits are required to be filed.

Further ordered that this cause be set down for hearing on the merits and all pending motions on Friday, April 14, 1939."

[fols. 123-124] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

ORDER STAYING MANDATE—July 14, 1939

On motion of counsel for appellees, It is ordered that the Mandate in this cause be, and it is hereby stayed until the further order of this Court, and that counsel for appellees promptly file a petition for a writ of certiorari in the Supreme Court of the United States, and forthwith file proof of the filing of said Petition in this Court.

[fols. 125-126] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

[Title omitted]

PROOF OF SERVICE—Filed July 24, 1939

To Julian Levi, Esq., 38 S. Dearborn St.; Abraham Greenspahn, Esq., 11 S. LaSalle St., Chicago, Illinois.

Please Take Notice that we have this day filed in the office of the Clerk of the Circuit Court of Appeals for the Seventh Circuit a Praecipe for Record, a copy of which is herewith served upon you.

Dated at Chicago, Illinois, July 24, 1939.

Walter A. Wade, Benjamin Wham, Attorneys for The Dickinson Industrial Site, Inc., Appellee.

Received a copy of the foregoing notice and a copy of the Praecipe therein referred to, this 24th day of July, 1939.

Julian H. Levi, Abraham Greenspahn, Attorneys for Percy Cowan, et al., Appellants.

[fol. 127] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

[Title omitted]

PRAECIPE FOR RECORD—Filed July 24, 1939

The Clerk of the United States Circuit Court of Appeals for the Seventh Circuit will please prepare the record to be

filed with the Supreme Court of the United States with the petition for certiorari to review the order or decree of said Circuit Court of Appeals entered May 22, 1939, in the above entitled cause, on appeal from a certain order of the District Court of the United States for the Northern District of Illinois, Eastern Division.

The record to be prepared shall include and be a transcript of the following:

A. From the record filed in cause No. 6842 in said Circuit Court of Appeals, being the original papers filed in the District Court of the United States for the Northern District of [fol. 128] Illinois, Eastern Division:

1. Petition for reorganization filed in the District Court June 18, 1934.

2. Order entered by the District Court September 10, 1934, allowing an amendment to the petition for reorganization.

3. Amendment to petition for reorganization filed in the District Court September 10, 1934.

4. Answer to the petition for reorganization filed in the District Court September 10, 1934.

5. Order of the District Court approving petition for reorganization entered September 10, 1934.

6. Order of the District Court confirming plan of reorganization entered February 23, 1938.

7. Order of the District Court entered March 5, 1938, amending order confirming plan of reorganization.

8. Order of the District Court entered October 26, 1938, allowing compensation and reimbursement for expenses.

9. Notice of appeal filed in the District Court December 5, 1938.

10. Appeal bond filed in the District Court on December 23, 1938.

11. Praecipe for record filed in the District Court December 23, 1938, by Samuel E. Hirsch, et al.

12. Notice of the filing of the foregoing praecipe filed in the District Court December 23, 1938.

13. Praecipe for record filed in the District Court December 23, 1938, by Wham & O'Brien, et al.

[fol. 129] 14. Notice filed in the District Court December 28, 1938.

15. Order entered by the District Court on December 28, 1938, directing the Clerk of the District Court to authenticate and transmit to the Clerk of the United States Circuit Court of Appeals for the Seventh Circuit the original papers filed in the District Court.

16. Certificate of the Clerk of the District Court to the record filed in the District Court January 5, 1939.

B. From the record in the United States Circuit Court of Appeals for the Seventh Circuit in the above entitled cause:

1. Petition of Percy Cowan, Edgar N. Greenebaum, Walter A. Wade and Julian H. Levi, as a Bondholders' Protective Committee acting under Deposit Agreement dated August 1, 1934, for the allowance of an appeal from the order of the District Court of the United States for the Northern District of Illinois, Eastern Division, entered October 26, 1938, in cause No. 56189 in said District Court, and assignment of errors, filed November 25, 1938.

2. Proof of service and notice of the filing of petition for allowance of appeal and assignment of errors, filed November 26, 1938.

3. Order entered December 13, 1938, allowing appeal.

4. Recital of filing of appeal bond filed December 22, 1938.

5. Order entered December 22, 1938, approving appeal bond.

6. Citation with proof of service thereof filed December 28, 1938.

7. Appearance of Walter A. Wade and Benjamin Wham, filed January 10, 1939.

[fol. 130] 8. Motion of appellee, The Dickinson Industrial Site, Inc., formerly the Albert Dickinson Company, to dismiss the appeal allowed December 13, 1938 (only) filed January 10, 1939.

9. Order entered January 10, 1939, extending time to file transcript, etc.

10. Recital of the filing of the brief and argument in response to the motion to dismiss the appeal on January 16, 1939.

11. Recital of the filing of reply brief of appellee on January 20, 1939.

12. Order entered January 20, 1939, continuing motion to dismiss to the hearing on the merits.

13. Motion filed January 27, 1939, to extend time for filing transcript of record (only).

14. Motion to consolidate, etc. filed March 13, 1939 (only).

15. Order entered March 13, 1939, relating to the record and the filing of briefs.

16. Order entered April 14, 1939, showing the renewal of the motion to dismiss, etc.

17. Opinion of the court filed May 22, 1939.

18. Order entered May 22, 1939, denying the motion to dismiss.

19. Decree entered May 22, 1939.

20. Recital of the filing of petition for re-hearing on June 8, 1939.

21. Recital of the filing of reply to petition on June 17, 1939.

[fol. 131] 22. Opinion of the court on rehearing filed June 24, 1939.

23. Order entered June 24, 1939, denying re-hearing.

24. Motion of appellee, The Dickinson Industrial Site, Inc. to correct the order entered by the Clerk on March 13, 1939, nunc pro tunc as of that date with supporting affidavit, filed July 11, 1939.

25. Motion of appellee, The Dickinson Industrial Site, Inc. to stay the issuance of the mandate (only).

26. Proof of service and notice of filing of the foregoing motions filed on July 11, 1939, filed July 11, 1939.

27. Reply of appellants to motion of appellee to correct order entered by the Clerk on March 13, 1939, together with affidavit in support thereof, filed July 14, 1939.

28. Proof of service of reply filed July 14, 1939.

29. Order entered July 14, 1939, correcting order of March 13, 1939.

31. Order entered July 14, 1939, staying issuance of mandate.

31. This praecipe for record.

32. Proof of service of this praecipe for record.

33. Placita.

34. Certificate of the Clerk of the U. S. Circuit Court of Appeals for Seventh Circuit authenticating the record.

Dated at Chicago, Illinois, July 24th, 1939.

Walter A. Wade, Benjamin Wham, Attorneys for Appellee, The Dickinson Industrial Site, Inc.

[fol. 132] Clerk's Certificate to foregoing transcript omitted in printing.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed November 6, 1939

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Butler took no part in the consideration and decision of this application.